

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.502 & 503 of 2011 and
M.P.No.1 of 2011 in
C.M.A.No. 502 of 2011 and
M.P.Nos. 1 & 2 of 2011 in
C.M.A.No.503 of 2011

C.M.A.No.502 of 2011

The National Insurance Co. Ltd.,
No.24, Kamarajar Bazaar,
Bodinayakanur,
Theni, Tamil Nadu - 625 513.Appellant

Vs.

1.P.Venkateswaran
2.K.Murugan Respondents

C.M.A.No.503 of 2011

The National Insurance Co. Ltd.,
rep. by its Divisional Manager,
LRN Buildings,
Saradha College Road,
Salem - 636 007.Appellant

Vs.

1.Uma Maheswari
2.Minor G.Sankara Narayanan
3.Minor G.Shanmugapriya
4.Jayalakshmi
5.Chinnusamy
6.K.Murugan Respondents

PRAYER in C.M.A.No.502 of 2011: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988 against
the Judgment and decree dated 16.06.2010, in M.C.O.P.No. 1119 of
2006, on the file of the Motor Accident Claims Tribunal
(Principal District Judge) at Salem.

PRAYER in C.M.A.No.503 of 2011: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988 against
the Judgment and decree dated 16.06.2010, in M.C.O.P.No. 17 of
2007, on the file of the Motor Accident Claims Tribunal
(Principal District Judge) at Salem.

C.M.A.No.502 of 2011

For Appellant : Mrs.R.Sreevidhya
For Respondents : Mr.S.Vadivel Murugan for R1
R2 - exparte

C.M.A.No.503 of 2011

For Appellant : Mrs.R.Sreevidhya
For Respondents : Mr.V.Vijayakumar for R1 to R5
R6 - exparte

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.Nos. 1119 of 2006 and 17 of 2007 respectively, on the file of the Motor Accident Claims Tribunal (Principal District Judge) at Salem. They have filed the both appeals questioning their liability as well as the quantum of compensation awarded by the Tribunal.

2. The facts of the cases in nutshell is as follows:

(i) On 23.02.2006, the claimant in M.C.O.P.No.1119 of 2006 was proceeding as pillion rider with his friend one Gopal, in a two wheeler Bajaj CT 100 bearing Registration No. TN 30 H 3611, driven by Gopal.

(ii) Gopal was the husband of the first claimant; the father of the second and third claimants; the son of the fourth and fifth claimants in M.C.O.P.No. 17 of 2007.

(iii) When the said two wheeler approached Nethimedu Power House near Lakshmi Steel, a matador tempo 307 bearing Registration No. TN 27 B 0644 driven by its owner one Murugan, the first respondent in both the claim petitions came from opposite direction in a rash and negligent manner and dashed against the two wheeler in which they was travelling, as a result of which they sustained injuries.

(iv) They were taken to Salem Government Mohan Kumaramangalam Medical College Hospital, where, Gopal, inspite of treatment, died at the hospital. The first claimant in M.C.O.P.No. 1119 of 2006 took treatment till 17.03.2006 at Ganga Hospital and he is still taking treatment.

(v) The first claimant in M.C.O.P.No. 1119 of 2006 is the only earning member of his family. The claimants in M.C.O.P.No. 17 of 2007 lost their income due to the death of Gopal, and they have also suffered loss of love and affection. The loss of the deceased Gopal, could not be compensated by any means.

(vi) According to the claimants in M.C.O.P.Nos. 1119 of 2006 and 17 of 2007, the rash and negligent driving of the driver of the matador tempo was the cause of the accident and therefore, the respondents 1 and 2 in both the claim petitions are jointly and severally liable to pay compensation to them. So, the claimant in M.C.O.P.No. 1119 of 2006 filed the said claim petition seeking compensation of Rs.15,00,000/- for the injuries sustained by him. The claimants in M.C.O.P.No. 17 of 2007 filed the said claim petition seeking compensation of Rs.25,00,000/- for the death of Gopal in the accident.

3. The learned Tribunal, after analysing the evidence on record, awarded compensation of Rs.3,88,344/- and Rs.10,54,000/- together with interest at the rate of 7.5% per annum to the claimants in M.C.O.P.Nos. 1119 of 2006 and 17 of 2007 respectively. Aggrieved over the orders passed by the Tribunal in both the MCOPs, the National Insurance Company Limited has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Before the Tribunal, the Insurance Company filed a counter stating that they dispute the age, the income, the avocation and the injury of the deceased. It is the specific plea of the Insurance Company that, on the date on the accident, the matador tempo, did not possess the Fitness Certificate as contemplated under the Motor Vehicles Act, 1988 and therefore, there is a breach of the terms of the contract of the Insurance Company and accordingly, the Insurance Company prayed for exoneration from their liability.

5. During the trial, PW1 to PW3 were examined and exhibits A1 to A28 were marked by the claimants. On behalf of the Insurance Company, RW1 and RW2 were examined and exhibits R1 and R2 were marked. On consideration of the oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the matador tempo, and since, the same was insured with the Insurance Company, the Tribunal held that both the owner of the matador tempo as well as the Insurance Company are jointly and severally liable to pay compensation to the claimants in both the MCOPs.

6. The learned counsel appearing for the appellant-Insurance Company would contend that as per the MVI report (Ex.A3 & A4) coupled with MVI report (Ex.R2), it is seen that, on the date of the accident viz., 23.02.2006, the Fitness Certificate as required under the Motor Vehicles Act, 1988 is not available for the matador tempo. Therefore, the Insurance Company has to be excluded from any liability towards claimants.

7. Heard the learned counsel appearing for the claimants.

8. On perusal of Exs. A3, A4 and R2, it could be seen that the Fitness Certificate for the matador tempo was renewed up to 15.02.2006, while, the date of the accident being 23.02.2006. Further, it is seen from the records that V.Rajamohan (RW2), Motor Vehicles Inspector who has marked (Ex.R2), has categorically stated that, the matador tempo had possessed the Fitness Certificate up to 15.02.2006 and therefore, this Court finds that on the above factual matrix, as reflected from the documentary evidence adduced before the Tribunal, the matador tempo does not have Fitness Certificate on the date of the accident viz., 23.02.2006.

9. In the decision in the case of The Manager, United India Insurance Company Ltd., vs. Balakrishnan and others in C.M.A.Nos.1441 & 1442 of 2009 reported in 2013 (2) TN MAC 515 (DB), a Division Bench of this court has held that, if the offending vehicle does not possess valid Fitness Certificate on the date of the accident, the insurer is liable to pay the compensation to the third party claimant and the Insurance Company shall recover the same from the owner. In view of the above decision coupled with the above factual findings of the present case, that, on the date of the accident, the matador tempo does not possess Fitness Certificate, 'pay and recovery' has to be ordered in both the MCOPs.

10. Quantum of compensation in both the MCOPs: The Tribunal after considering various aspects has awarded a just and reasonable compensation and the same cannot be said to be excessive. Therefore, the same need not be disturbed at this juncture.

11. In the result,

(i) The Civil Miscellaneous Appeals are allowed in part to the limited extent indicated above. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The quantum of compensation awarded by the Tribunal in both the MCOPs are upheld.

(iii) The orders passed by the Tribunal in M.C.O.P.Nos.1119 of 2006 and 17 of 2007 with regard to the liability alone is modified and 'pay and recovery' is ordered.

(iv) The present appellant - National Insurance Company Limited is directed to 'pay' the entire compensation to the claimants in both the MCOPs respectively and then 'recover' the same from the owner of the matador tempo bearing Registration No. TN 27 B 0644.

(v) It is brought to the notice of this court that the Insurance Company has already deposited the entire compensation amount awarded by the Tribunal to credit of respective MCOPs. It is open to the Insurance Company to 'recover' the same from the owner of the said matador tempo bearing Registration No. TN 27 B 0644, in the suitable manner known to law.

(vi) The claimant in M.C.O.P.No. 1119 of 2006 is permitted to withdraw the respective amount after following due process of law.

(vii) The claimants 1, 4 and 5 in M.C.O.P.No. 17 of 2007 are permitted to withdraw their respective amounts, after following due process of law. The apportionment granted by the Tribunal shall be kept intact.

(viii) The second and third claimants in M.C.O.P.No. 17 of 2007 are minor, and therefore, their compensation amount is ordered to be deposited in any one of the nationalized bank, until they attain majority and the first claimant in the said claim petition is permitted to withdraw the interest directly from the bank, once in three months in order to maintain the minors.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
The Principal District Judge, Salem.

Copy To: The Section Officer, V.R.Section,
High Court of Madras

+1 cc to M/s.R.Sreevidhya, Advocate Sr.No.19537
+1 cc to M/s.S.Vadivel Murugan, Advocate Sr.No. 18629
+1 cc to M/s.V.Vijayakumar, Advocate Sr.No. 18647

AKM/27.09.19/6P- 6C /

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