

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 23.04.2019]

[PRONOUNCED ON : 26.08.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.814 to 819 of 2011
and
Cros. Obj.Nos.43 to 45 of 2012

Divisional Manager
The New India Assurance Company Ltd.,
Big Street, Thiruvannamalai Town.

... Appellant/2nd Respondent in
all CMAs.

Vs

1.Durai
2.S.Srinivasan ... Respondents/petitioner/1st
respondent in CMA.814/2011

1.Arumugam
2.S.Srinivasan ... Respondent/petitioner/1st
respondent in CMA.815/2011

1.Sankari
2.S.Srinivasan ... Respondent/petitioner/1st
respondent in CMA.816/2011

1.Anandan
2.S.Srinivasan ... Respondent/petitioner/1st
respondent in CMA.817/2011

1.Palani
2.S.Srinivasan ... Respondent/petitioner/
1st respondent in CMA.818/2011

1.Neelavathyammal
2.S.Srinivasan ... Respondent/petitioner/2nd
respondent in CMA.819/2011

Cross. Obj.Nos.43 to 45 of 2012:

Arumugam ... Cross Objector/1st respondent in
CMA.815/2011

Sankari ... Cross Objector/1st respondent in
CMA.816/2011

Anandan ... Cross Objector/1st respondent in
CMA.817/2011

Vs

1.Divisional Manager,
New India Assurance Company Limited,
Big Street,
Thiruvannamalai Town.

2.S.Srinivasan ... Respondents/Appellant/
2nd Respondent in all CMAs.

Prayer in all C.M.As: Civil Miscellaneous Appeals filed under
Section 173 of the Motor Vehicles Act, 1988 against the common
award and decree dated 30.10.2010 passed in M.A.C.T.O.P.
Nos.1106,553,592,594,647 and 736 of 2006 on the file of the
Motor Accident Claims Tribunal, Thiruvannamalai/Additional Sub
Judge, Thiruvannamalai.

Prayer in Cross.Objection Nos.43 to 45 of 2012: Cross Objection
filed under Order 41, Rule 22 of C.P.C. to set aside the
judgment and decree of the claims Tribunal in its award dated
30.10.2010 and made in M.C.O.P.Nos.553, 592 and 594 of 2006, on
the file of Motor Accident Claims Tribunal, Additional Sub
Judge, Thiruvannamalai.

For Appellant in all C.M.As.
& Respondent-1 in
Cross. Obj. Nos.43 to 45/2012 : Mr.R.Sivakumar

For Respondent-1 in
C.M.A.No.814/2011 : Mr.B.Jawahar

For Respondent-1 in
CMA.Nos.815 to 819/2011
& Appellant in
Cross Obj.Nos.43 to 45/2012 : Mr.F.Terry Chellaraja

For Respondent -2 in
CMA.No.814 to 819/2011

: No Appearance

COMMON JUDGMENT

C.M.A.Nos.814 to 819 of 2011 are preferred by the New India Assurance Company Limited against the common award and decree dated 30.10.2010 passed in M.A.C.T.O.P. Nos.1106, 553, 592, 594, 647 and 736 of 2006 on the file of the Motor Accident Claims Tribunal, Thiruvannamalai/Additional Sub Judge, Thiruvannamalai. On the other hand, the claimants in CMA.Nos.815 to 817 of 2011 have filed Cross Objection Nos.43 to 45 of 2012 seeking enhancement of compensation awarded by the Tribunal.

2. Since all the appeals and the cross-objections are arise out of the same accident and as against the award passed by the Tribunal, all are taken up together and disposed of by way of this common judgment.

3. The Insurance company is the appellant herein. The 1st respondent in all CMAs filed respective claim petitions in MCOP.Nos.1106 ,553, 592, 594, 647 and 736 of 2006 alleging that all of them are coolies and they were travelled in the mini door tempo bearing Registration No.TN-22 AF 8573. On 09.12.2005, at about 7.00 p.m, when all claim petitioners were travelling in the goods auto and the auto was nearing Samikanu house at Malpalanandal Village, the driver of the auto drew the vehicle in rash and negligent manner and capsized the vehicle on the road, the claim petitioners and others have sustained injuries and took treatment in G.H. Tiruvannamalai.

4. The 2nd respondent / Insurance company has filed counter statement denying the age, avocation and alleged income of the claim petitioners and also denying the nature of the accident and specifically stated that all the claim petitioners have travelled in the said goods vehicle as unauthorised passengers and hence, the Insurance company is not liable to pay the compensation. In view of the fact that all the claim petitions have been arising out of the very same accident, common evidence was let in and common judgment was pronounced.

5. On behalf of the petitioner's side, eight witnesses were examined as PWs.1 to PW.8 and documents Exs.P1 to P21 were marked. No witnesses were examined and documents were marked on the side of the 1st respondent in MCOP.No.647 of 2006. On behalf of the 2nd Respondent, three witnesses were examined as RWs.1 to RW.3 and documents Exs.R1 to R4 were marked.

6. On consideration of oral and documentary evidence, the Tribunal has held that the accident has taken place due to rash and negligent driving of the driver of the tempo van and the injured claimants have travelled as a owner of the goods. Since the driver of the vehicle does not possess necessary badge endorsement as required to drive commercial vehicle and the Tribunal has held that the Insurance company is directed to pay the compensation and to recover the same from the owner of the vehicle, the Insurance company has preferred the above appeals on the ground of liability and quantum of compensation as well.

7. I have heard the rival submissions and perused the documents.

8. The learned counsel appearing for the 1st respondent in CMA.No.814 of 2011 would submit that the claimant, who had travelled in the goods vehicle as the owner of the goods by carrying paddy bags and he has also made submission in support of the judgment of the Tribunal.

9. The learned counsel appearing for the appellant /Insurance company would contend that the driver of the mini door tempo having no valid license to drive the goods vehicle at that point of time. He would further contend that the driver had no valid badge to drive the vehicle and therefore, the same amounts to violation of the terms and conditions of the policy and hence, the Insurance company cannot be mulcted with the liability.

10. On perusal of the documents adduced before the Trial Court as well as the oral evidence of injured claimants PW.1, PW.2 and PW.6, it is categorically stated, that due to the rash and negligent driving of the driver, the vehicle capsized near samikannu house and coupled with the documentary evidence found in Ex.P1 - FIR, Ex.P5 - charge sheet filed before the Court and also Ex.P6 - extract of the order passed by the Magistrate Court, the Tribunal has rightly come to the conclusion that the accident has taken due to rash and negligent driving of the driver of the offending vehicle and the same is found to be in order. Accordingly, the said finding of the Tribunal is hereby confirmed.

11. It is seen from the evidence of RW-2- Assistant from the office of Thiruvannamalai and RW-2- Assistant from the RTO office, Meenambakkam, Chennai that on the date of the accident the driver of the offending vehicle had license to drive the vehicle, however, does not have necessary badge endorsement. In this regard, the Hon'ble Apex Court in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,], would contend that since the driver of the mini tempo

van possessed driving license to drive a Light Motor Vehicle, the badge endorsement is not necessary and hence, this court is of the considered view that the Tribunal has granted pay and recovery to the Insurance company based upon the judgment available at that point of time. In view of the above cited judgment, this court holds that pay and recovery ordered by the Tribunal is liable to be vacated and accordingly, it is held that in view of the evidences of RW-2 and RW-3 coupled with Ex.R-4, this court holds that the badge endorsement is not required and the driver of the offending vehicle having valid driving license at the time of the accident and hence, both the owner of the vehicle and the Insurance company are jointly and severally liable to pay the compensation and the finding in this regard by the Tribunal is modified to the extent indicated above.

12. The learned counsel for the appellant would contend that all the claim petitioners have travelled as coolies in goods vehicle. It is specifically stated in evidence of PWs.1 to PW.6 that they have travelled in the vehicle as the owners of the goods by carrying paddy bags. The Tribunal has taken note of the entire issue and also relied upon the decision reported in 2007 ACJ Page 2824 (New India Assurance Co., Ltd., Vs. G.Vijaya Kandiban and another) and accordingly held that contents of the FIR is not an encyclopaedia of the facts and in view of the clear and cogent evidence of Pws.1 to Pw.6 coupled with admission of RW1, officer from the Insurance company, the Tribunal has rightly come to the conclusion that all the injured claim petitioners travelled in the offending goods vehicle and taking note of the nature of the policy- Ex.R3, the Tribunal has held that since the policy is the comprehensive policy and the owner of the goods has travelled in the vehicle and sustained injuries coupled with the admission of RW1, with the classification of the vehicle, being goods carrying vehicle, the Tribunal has held that the valid policy covering the extent of eventuality in the instant case.

13. Accordingly, taking into consideration that on the date of the accident all the claim petitioners travelled in the vehicle as the owner of the goods and at the time of the accident, the driver of the vehicle having valid and effective license coupled with the ratio of the Supreme Court that in respect of the classification of the vehicle as in the instant case, no badge endorsement is necessary.

14. This Court finds that the Insurance company is jointly and severally liable to pay the compensation along with the owner of the vehicle. Similar finding rendered by the Tribunal, on different reasoning, is hereby confirmed and on the question of liability all the contentions raised by the appellant / Insurance company shall stand negatived.

15. On the point of quantum of compensation, after perusing the compensation awarded by the Tribunal, the Insurance company would contend that the quantum of compensation and the percentage of disability said to have been suffered by the claimant are on the higher side, while the learned counsel for the respective respondents / claim petitioners submitted that in CMA.Nos.814,815,816,817,819 of 2011 and in CMA.Nos.815, 816 & 817 of 2011 they have also filed cross objection for enhancement of compensation in cross objection application Nos. 43 to 45 of 2012. After going through the various decisions and the evidence of the PWs.7 and PW.8 coupled with the disability certificates issued under Exs.P.16, P.18 and Ex.P.20, this court is of the considered view that the medical evidence of PW.7 coupled with the medical records namely P7 to P18, and P20, the percentage of claimants disabilities fixed by the Tribunal and compensation awarded under different heads are all appears to be just and reasonable and it does not warrant any interference by this Court.

16.In the result,

(i) The Civil Miscellaneous Appeal Nos.814 to 819 of 2011 preferred by the Insurance Company are dismissed and the Cross Objection Nos.43 to 45 of 2012 preferred by the claimants are also dismissed by confirming the Judgment and Decree dated 30.10.2010 made in M.A.C.T.O.P.Nos.1106, 553, 592, 594, 647 and 736 of 2006 on the file of the Motor Accidents Claims Tribunal, Thiruvannamalai / Additional Sub Judge, Thiruvannamalai.

(ii) The appellant in CMA.Nos.814 to 819 of 2011 both the Insurance Company and the owner of the vehicle are directed to deposit the amount jointly and severally as determined by the Tribunal together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment.

(iii) On such deposit being made, the first respondent in CMA.Nos.814 to 819 of 2011/ claimants are entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn.

(iv) There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Additional Sub Judge,
Motor Accidents Claims Tribunal,
Thiruvannamalai.

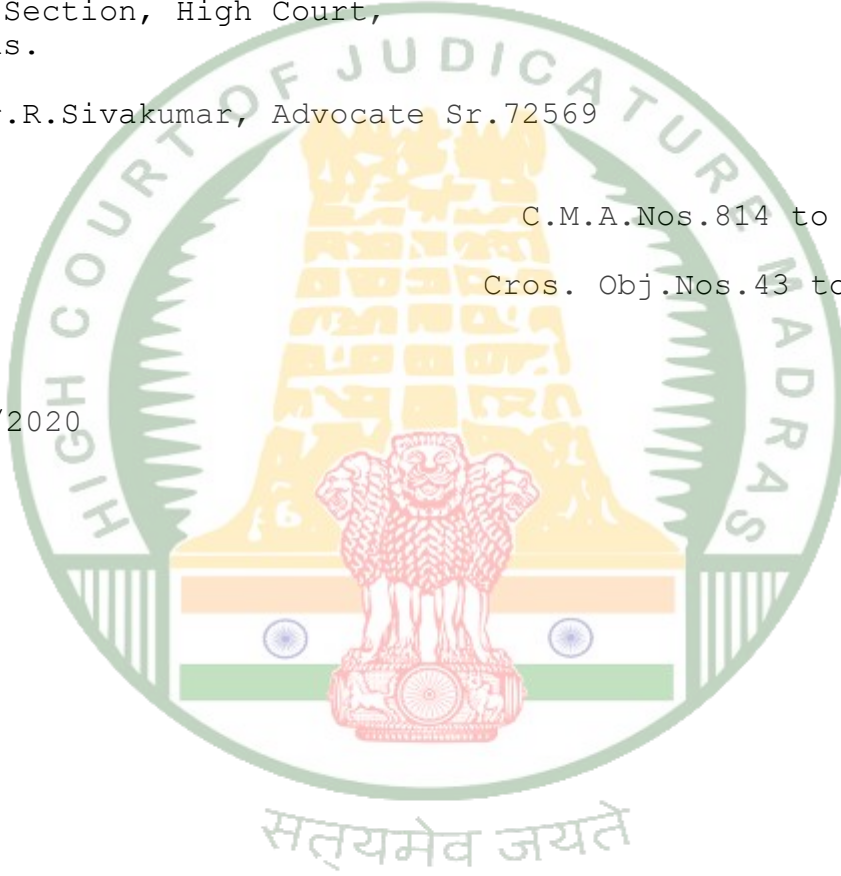
Copy to

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Sivakumar, Advocate Sr.72569

C.M.A.Nos.814 to 819 of 2011
and
Cros. Obj.Nos.43 to 45 of 2012

gj[col]
srg 29/12/2020



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