

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.2953 to 2956 of 2013

and

M.P.Nos.1 to 1 of 2013

The Manager,
The New India Assurance Company Limited,
Bye-pass Road,
Dharmapuri.

.... Appellant
(in all C.M.As)

.Vs.

1.Murugan

.... 1st Respondent
(in C.M.A.No.2953 of 2013)

1.Sivakumar

.... 1st Respondent
(in C.M.A.No.2954 of 2013)

1.Chinnapappa

.... 1st Respondent
(in C.M.A.No.2955 of 2013)

1.Devaki

.... 1st Respondent
(in C.M.A.No.2956 of 2013)

2.C.Venkatesan

... 2nd Respondent-Exparte
(in all C.M.As)

Prayer in C.M.A.No.2953 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 10.05.2013 passed in M.C.O.P.No.238 of 2012 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri.

Prayer in C.M.A.No.2954 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 10.05.2013 passed in M.C.O.P.No.239 of 2012 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri.

Prayer in C.M.A.No.2955 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 10.05.2013 passed in M.C.O.P.No.240 of 2012 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri.

Prayer in C.M.A.No.2956 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 10.05.2013 passed in M.C.O.P.No.243 of 2012 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri.

In all C.M.As:

For Appellant : Mr.R.Sivakumar

For R1 : Mr.Selvam

For R2 : No appearance

C O M M O N J U D G M E N T

The appellant / New India Assurance Company Limited is the second respondent in M.C.O.P.Nos.238 to 240 and 243 of 2012 on the file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri. The first respondent in all the C.M.As filed the above said claim petitions under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.50,000/- each for the injuries sustained by them in a road accident on 03.05.2006.

2. The case of the claimants is that on 03.05.2006, they were traveling in a tempo van bearing Registration No. TN 47 C 2003 on Dharmapuri - Krishnagiri main road and that when they were nearing Kamatchiamman Marriage Hall at about 07.30 P.M., the driver of the tempo van hit a tractor, as a result of which, the claimants sustained injuries. According to the claimants, the rash and negligent driving of the driver of the tempo van belonging to the second respondent was the cause of the accident and that since the said tempo van was insured with the present appellant / New India Assurance Company Limited, the owner and the insurer are liable to pay compensation jointly and severally.

3. The second respondent / owner of the tempo van remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / New India Assurance Company Limited, contested the claim petitions on all the grounds available to the insured. The learned Chief Judicial Magistrate, Dharmapuri, while awarding compensation of Rs.15,000/- each together with interest at the rate of 7.5% per annum to the claimants, held that since the claimants are gratuitous passengers in the tempo van, the Insurance Company should pay

the compensation amount in the first instance and then recover the same from the owner of the tempo van. Aggrieved over the orders passed by the Tribunal, the appellant / New India Assurance Company Limited has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.R.Sivakumar, learned counsel appearing for the appellant / New India Assurance Company Limited contended that since the claimants were all gratuitous passengers in a goods vehicle / tempo van, the Insurance Company is not liable to pay the compensation.

5. Per contra, Mr.Selvam, learned counsel appearing for the claimants contended that the Tribunal after considering all the aspects of the case, concluded that since the claimants are gratuitous passengers the Insurance Company should pay the award amount in the first instance and then recover the same from the owner of the vehicle.

6. No appearance on behalf of the second respondent / owner of the vehicle.

7. In the instant case, the claimants were admittedly gratuitous passengers and therefore, they would not be covered under the policy as per the decision of Division Bench of this Court in Bharati AXA General Insurance Company Limited, rep. by its Manager, 1st floor, Fems Icon, Survey No. 28, Doddannakundi, K.R.Puram Obli, Bangalore - 560 037 Vs. Anandi and others reported in 2018 (2) TNMAC 731 (DB), wherein it has been held thus:

"...50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of

an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India."

8. Therefore the orders passed by the Tribunal directing the Insurance Company to pay the award amount in the first instance and then recover the same from the owner of the tempo van is liable to be set aside.

9. As regards quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the first respondents / claimants and infact, no cross objections or appeals were filed by them. Therefore, the quantum of compensation awarded by the tribunal is upheld.

10. In the result,

(i) All the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii) The order of the Tribunal directing the appellant / New India Assurance Company Limited to pay the award amount in the first instance and then recover the same from the owner of the vehicle is set aside.

(iii) The appellant / New India Assurance Company Limited is exonerated from paying the compensation amount.

(iv) The quantum of compensation passed by the Tribunal is upheld.

(v) The second respondent / owner of the tempo van bearing Registration No. TN 47 C 2003 is directed to deposit the compensation amount of Rs.15,000/- to each of the claimants together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.238 to 240 and 243 of 2012 on the

file of the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Dharmapuri, respectively within a period of four weeks from the date of receipt of a copy of this order.

(vi) The appellant / New India Assurance Company Limited is at liberty to withdraw the amount already deposited by them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Dharmapuri.

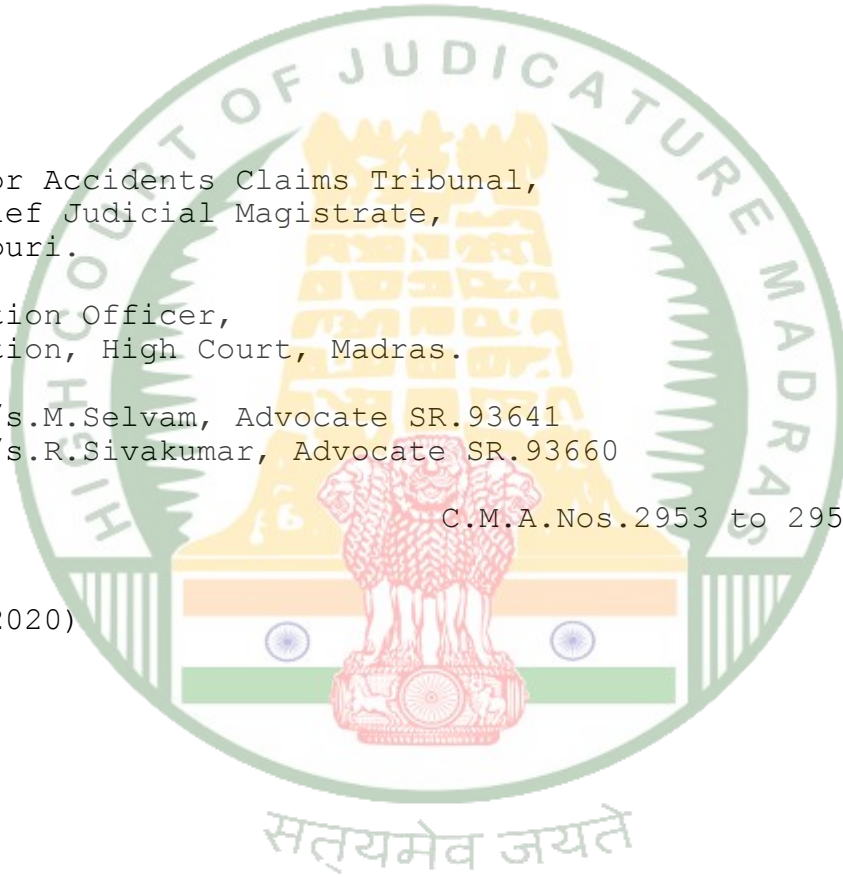
2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.M.Selvam, Advocate SR.93641

+1cc to M/s.R.Sivakumar, Advocate SR.93660

C.M.A.Nos.2953 to 2956 of 2013

CNR (CO)
CB(11/06/2020)



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