

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3496 of 2013

and

MP.No.1 of 2013

ICICI Lombard General Insurance Co. Ltd.,  
Branch Office, Swarnambigai Plaza,  
First floor, No.33,  
Omalur Main road,  
Near Bus stand, Salem town,  
Taluk & District.

...Appellant

vs.

1.Perumal  
2.M.Madhaiyan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 16.09.2011 passed in MCOP.No.86 of 2009 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Dharmapuri.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : No appearance

J U D G M E N T

The appellant / ICICI Lombard General Insurance Company, the second respondent in MCOP.No.86 of 2009 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Dharmapuri has filed the present appeal. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident on 12.11.2008.

2. The case of the claimant in nutshell is as follows:

On 12.11.2008, the claimant along with three others engaged a Tata Ace Mini Van bearing Registration No. TN 29 AY 5743 for transporting flower baskets and they were travelling in the van with flower baskets. The van was proceeding towards Thanjavoor and at about 10.00 pm, the driver of the van drove the vehicle rashly and negligently and lost his control over the van, as a result whereof, the claimant fell down from the van and sustained injuries all over his body. According to the

claimant, the rash and negligent driving of the driver of the van belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the van remained absent before the Tribunal and therefore he was set *exparte*. ICICI Lombard General Insurance Company contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Dharmapuri after analysing the evidence on record, awarded a compensation of Rs.70,000/- together with interest at the rate of 7.5% per annum to the claimant and directed the owner and the insurer of the van to pay the compensation jointly and severally. Aggrieved over the orders passed by the Tribunal, ICICI Lombard General Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sree Vidhya, learned counsel appearing for the appellant contended that since the claimant travelled in the goods vehicle as a gratuitous passenger, the Insurance Company cannot be held liable to pay compensation.

5. No appearance on behalf of the respondents.

6. In the decision in *Royal Sundaram Alliance General Insurance Co.Ltd. vs. P.Ayyakannu* and another reported in 2009 (5) MLJ 707 it has been held that the expression "any passenger" under Section 147 (1)(b)(ii) must be understood as passenger authorised to be carried in the vehicle and "use of the vehicle" as permitted use of the vehicle and that the Insurance taken out for the number of permitted passengers alone would determine the liability of the Insurance Company in respect of those passengers.

7. In the instant case, it is contended that the claimant was travelling along with goods in the mini van. A perusal of a copy of the RC book (Ex.A4) and Insurance Policy (Ex.A6) clearly shows that it covers two persons including the driver and since the claimant was sitting within the permitted seating capacity of the vehicle, the Insurance Company cannot avoid its liability as laid down in the decision in *Royal Sundaram Alliance General Insurance Co.Ltd. vs. P.Ayyakannu* and another (cited *supra*). In view of the same, the appeal fails and is dismissed.

8. In the result,  
(i) The Civil Miscellaneous Appeal is dismissed. No costs.  
Consequently, the connected Miscellaneous Petition is closed.  
(ii) The order passed by the Tribunal is upheld.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

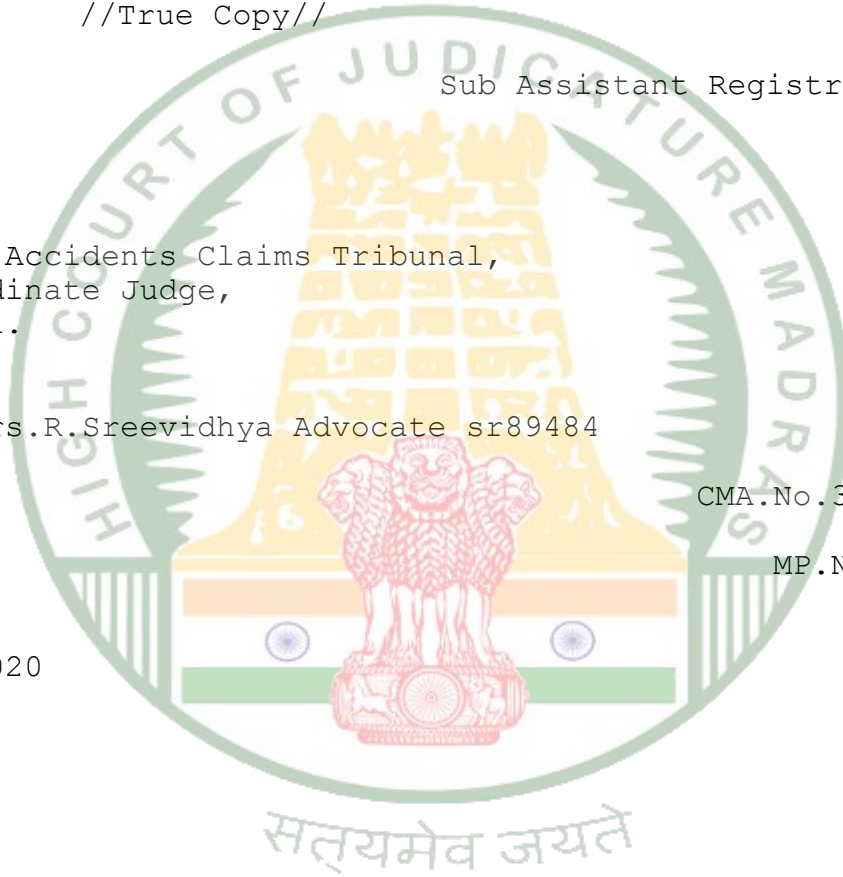
mbi  
To

The Motor Accidents Claims Tribunal,  
The Subordinate Judge,  
Dharmapuri.

+lcc to Mrs.R.Sreevidhya Advocate sr89484

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