

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.733 of 2013

The National Insurance Company
Limited, Dharmapuri.

... Appellant/2nd Respondent

..Vs..

1.Nandeeswaran ...1st Respondent/Claimant

2.P.T.Marthavel @ Maruthavel ...2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 17.04.2012 in M.C.O.P.No.1294 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri.

For Appellant : Mr.G.Udayasankar

For Respondents : R1 -Mr.Mukund R.Pandiyan
R2 - Set Ex-parte before
the Tribunal

JUDGMENT

The appellant herein is the National Insurance Company Limited, Dharmapuri. The first respondent/claimant filed a claim petition in M.C.O.P.No. 1294 of 2007 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Krishnagiri, seeking a compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that took place on 17.03.2004.

2.At about 17.30 hours, when the claimant was travelling as a cleaner in a mini door vehicle bearing Registration No.TN 29 K 5850, from Mathur to Krishnagiri and was nearing Perugopanapalli, due to over speed, the driver of the vehicle lost his control, hence the vehicle was suddenly capsized and as a result of said accident which, the first respondent/claimant sustained injuries on his right middle finger, right little finger, right leg, right foot and all over his body and he was taken to Government Hospital at Krishnagiri and thereafter

shifted to a private hospital for continuous treatment. The rash and negligent driving of the mini door lorry, belonging to the second respondent was the cause of the accident and that since the said vehicle was insured with the present appellant / National Insurance Company Limited, Dharmapuri both of them are jointly and severally liable to pay compensation to the claimant.

3. The owner of the mini door vehicle namely the second respondent remained absent before the Tribunal and therefore, he was set ex-parte. The present appellant /National Insurance Company Limited, Dharmapuri contested the above said claim petition by filing a counter.

4.The Claims Tribunal after analysing the evidence on record, awarded a compensation of Rs.1,02,700/- together with interest at the rate of 6% per annum to the first respondent/claimant.

5.The compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.79,200/-
2.	Pain and sufferings	Rs.8,000/-
3.	Extra Nourishment	Rs.3,000/-
4.	Medical bills	Rs.9,500/-
5.	Extra Nourishment	Rs.3,000/-
Total		Rs.1,02,700/-

6. Aggrieved over the award passed by the Tribunal, the National Insurance Company Limited, Dharmapuri, has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988, challenging against the liability fastened on them.

7. Mr.G.Udayasankar, learned counsel appearing for the appellant would contend that the present appeal is only on the issue of liability. The said mini door vehicle was carrying 17 passengers along with the driver and cleaner. Therefore, carrying the passengers in a goods vehicle amounts to violation in terms and conditions of the policy of the Insurance company. The Tribunal did not consider the aspect that the policy was issued only for the purpose of carrying the goods in the said vehicle and not for the passengers. Therefore, the Tribunal ought to have fixed the liability on the part of the owner of the said mini door vehicle.

8. On the otherhand, Mr. Mukund R. Pandiyan, learned counsel appearing for the first respondent/claimant contended that the Tribunal has fixed the liability on the present appellant on the ground that there is enough evidence to show that the claimant had travelled in the said vehicle as a cleaner and not as an unauthorized passenger. It is very clear that the Insurance company has issued a policy which covers both the driver and cleaner of the said vehicle. Hence, the claimant is entitled for compensation awarded by the Tribunal.

9. Thus, this court while upholding the views of the Tribunal, that the Insurance Policy was issued only for carrying the goods and not for carrying the passengers. If the vehicle is used otherwise, then for carrying the goods and the same amounts to violation of the terms and conditions of the policy. In the present case, the mini door vehicle was carrying the passengers instead of goods. Therefore, this Court is inclined to observe that carrying passengers in a vehicle which is meant only for carrying the good is not permissible. This is a violation of the policy condition. Therefore, this Court is of the view that some percentage of the liability has to be fastened on the owner of the vehicle and accordingly, this Court is inclined to fix 10% liability on the part of the owner of the vehicle. So far as, the appellant/ Insurance Company is concerned this Court is inclined to fix 90% of the liability on them. Accordingly, the appellant is directed to pay 100% of the compensation awarded by the Tribunal to the claimant and then, they recover 10% of the compensation from the owner of the said vehicle.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is upheld.

(iii) The orders passed by the Tribunal with regard to the liability is modified and the present appellant is directed to pay the entire compensation awarded by the tribunal along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon and then recover 10% of the

compensation awarded by the Tribunal from the owner of the said mini door vehicle.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Additional District Court,
Krishnagiri.

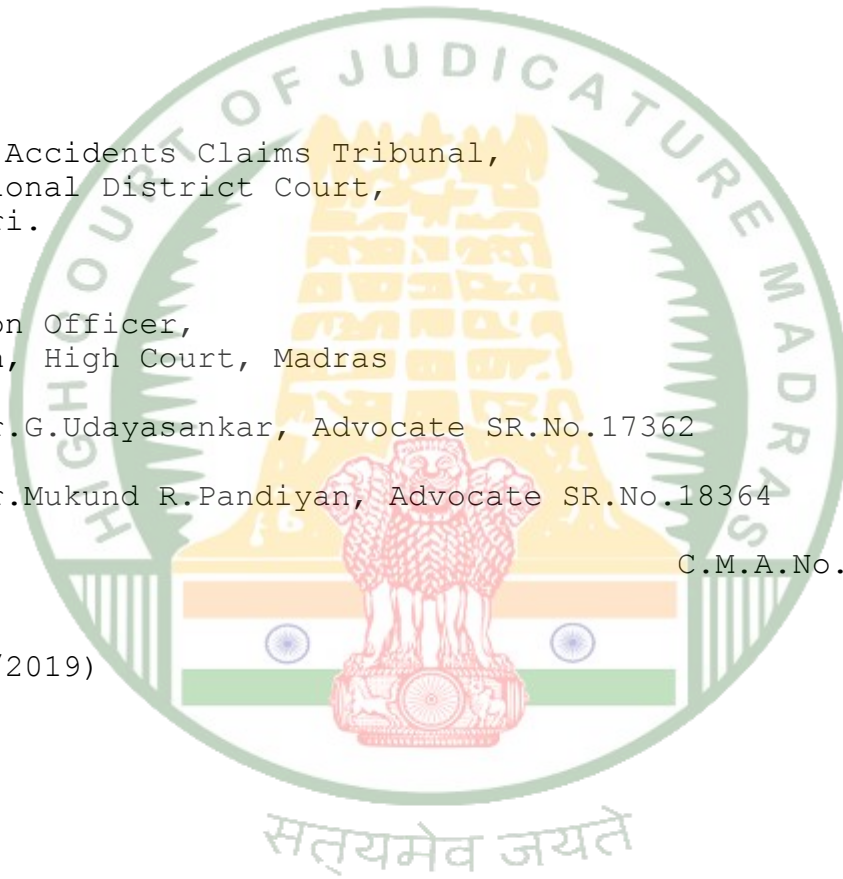
Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.G.Udayasankar, Advocate SR.No.17362

+1cc to Mr.Mukund R.Pandiyan, Advocate SR.No.18364

C.M.A.No.733 of 2013

BS (CO)
GMY (03/07/2019)



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