

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2607 to 2618 of 2016
and
CMP.Nos.18705 to 18716 of 2016

CMA.No.2607 of 2016

The Oriental Insurance Co. Ltd.,
Oriental House, 2nd Floor,
Old No.115, New No.216,
Prakasam Road, Broadway,
Chennai - 600 108. ... Appellant/R2 (in all)

/vs/

1.Hemalatha .. R1/Petitioner in CMA No.2607/16
2.K.Annadurai .. Respondent 2/R1 in CMA No.2607/16

1. B. RATHINAM ..R1/Petitioner in CMA No.2608/16
2. K. ANNADURAI ..R2/R1 in CMA No.2608/16

1. Mrs.SAGAYAM ..R1/Petitioner in CMA No.2609/16
2. K. ANNADURAI ..R2/R1 in CMA No.2609/16

1. IYYAPPAN ..R1/Petitioner in CMA No.2610/16
2. K. ANNADURAI ..R2/R1 in CMA No.2610/16

1. S.KEERTHANA .. R1/Petitioner in CMA No.2611/16
2. K.ANNADURAI ..R2/R1 in CMA No.2611/16

1. MRS.MUGUNDHA SREE ..R1/Petitioner in CMA No.2612/16
2. K.ANNADURAI ..R2/R1 in CMA No.2612/16

1. Mrs. SANTHI ..R1/Petitioner in CMA No.2613/16
2. K. ANNADURAI ..R2/R1 in CMA No.2613/16

1. Mrs.SUJATHA .. R1/Petitioner in CMA No.2614/16
2. K. ANNADURAI ..R2/R1 in CMA No.2614/16

1.MR.SENTHIL @ SENTHILKUMAR ..R1/Petitioner in CMA No.2615/16
2. K.ANNADURAI ..R2/R1 in CMA No.2615/16

1. RAJALAKSHMI ..R1/Petitioner in CMA No.2616/16
2. K.ANNADURAI ..R2/R1 in CMA No.2616/16

1. DHARSHINI MINOR
REP BY HER MOTHER AND N.F
MRS.DHATCHAYANI ..R1/Petitioner in CMA No.2617/16
2. K. ANNADURAI ..R2/R1 in CMA No.2617/16

1.MRS. LAKSHMI ..R1/Petitioner in CMA No.2618/2016
2. K. ANNADURAI ..R2/R1 in CMA No.2618/2016

PRAYER in CMA.No.2607 of 2016: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree dated 16.09.2015 made in MCOP.No.4829, 4998, 4999 to 5002, 5159, 5160, 5263, 5293/12, 5686/12 & 1029/13 of 2012 on the file of the Motor Accident Claims Tribunal (Small Causes Court - V Judge) Chennai. and batch

For Appellant : Mr.J.Chandran
in all cases

For Respondent : Mr.K.Varadhakamaraj
No.1 in all cases

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the Judgement and Decree dated 16.09.2015 made in MCOP.Nos.4829, 4998, 4999, 5000, 5001, 5002, 5159, 5160, 5263, 5293, 5686 of 2012 & 1029 of 2013 on the file of the Motor Accident Claims Tribunal (Small Causes Court - V Judge), Chennai.

2.All the appeals arise out of the common award and same accident and therefore, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petitions.

4.The claimants filed the claim petitions claiming various amounts as compensation for the injuries sustained by them in the accident that took place on 16.09.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held

that the accident occurred only due to rash and negligent driving by the driver of the Mini Bus belonging to the first respondent and as the insurer, the 2nd respondent Insurance Company is liable to pay the compensation to the claimants in all the MCOPs and awarded various amounts as compensation. Against the said award dated 16.09.2015 made in M.C.O.P.Nos. MCOP.Nos.4829, 4998, 4999, 5000, 5001, 5002, 5159, 5160, 5263, 5293, 5686 of 2012 & 1029 of 2013 respectively, the second respondent /Insurance Company has come out with the present appeals challenging the award fastening the liability on them.

5. According to the claimants, they travelled in the mini bus belonging to the first respondent, which is insured with the second respondent Insurance Company and due to rash and negligent driving by the driver of the Mini bus, hit against the motor cycle. In the result, the bus capsized and they sustained injuries. Hence, they filed claim petitions claiming compensation for the injuries sustained by them.

6. The first respondent filed counter and contended that the Mini Bus was insured with the second respondent Insurance Company and only the Insurance Company is liable to pay the compensation.

7. The second respondent Insurance Company, in the counter statement, has contended that the capacity of mini bus is only 12 + 1 including the driver and at the time of the accident 20 persons had travelled in the mini bus and the accident occurred due to overloading of passengers. In view of violation of policy and permit conditions, they are not liable to pay compensation. In any event, the accident did not occur due to rash and negligent driving by the driver of the Mini bus and the rider of the motorcycle suddenly crossed the road and the accident had occurred only due to rash and negligent riding by the rider of the motorcycle.

8. The Tribunal, considering the oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the mini bus and awarded various amounts as compensation to the claimants. In view of the violation of permit and policy conditions, i.e, more persons had travelled than the permitted capacity at the time of the accident, the Tribunal ordered pay and recovery. Against the said award, the second respondent-Insurance Company has come out with the present appeals.

9. Though the learned counsel appearing for the second respondent Insurance Company has raised the grounds with regard to the liability, when the appeals are taken up for hearing, he has restricted his argument with regard to the quantum of

compensation. Further, he contended that the Tribunal erroneously accepted the evidence of PW2 with regard to the percentage of disability, which is excessive. The Tribunal has failed to see that the claimants have been treated only conservatively and in view of the same, the amounts awarded by the Tribunal under the different heads are excessive.

10. Per contra, the learned counsel appearing for the claimants contended that the claimants have examined themselves as well as the Doctor to prove the nature of injuries and disability suffered by them. The Tribunal, considering the nature of injuries, disability and the evidence of PW2, awarded compensation, which are not excessive and prayed for dismissal of the appeals.

11. Heard the learned counsel appearing for the second respondent-Insurance Company as well as the learned counsel appearing for the claimants.

12. From the materials available on record, it is seen that the claimants have taken treatment immediately after the accident at Govt. Hospital, Thiruvallur as in patient on various dates and produced discharge summaries showing the nature of injuries and treatment taken by them. They also examined the doctor to prove the percentage of disability suffered by them. Even though the learned counsel appearing for the second respondent-Insurance company contended that the percentage of disability is excessive, no evidence was let in to substantiate their claim, RW1 examined on behalf of the insurance company had deposed only with regard to overloading in the mini bus at the time of the accident and did not depose with regard to the nature of the injuries or percentage of disability of the claimants. The Tribunal has considered the nature of the injuries and treatment taken by each claimant and based upon the same, awarded compensation under different heads. In view of the same, the compensation awarded by the Tribunal under the different heads are not excessive. I do not find any error in the award of the Tribunal warranting interference by this Court.

13. In the result, the Civil Miscellaneous Appeals are dismissed and the common award passed by the Tribunal is hereby confirmed. The second respondent /Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants in all MCOPs

are permitted to withdraw the respective award amounts along with interest and costs, awarded by the Tribunal, less the amount, if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sms/klt

To

1. The Motor Accident Claims Tribunal,
(Small Causes Court - V Judge), Chennai.

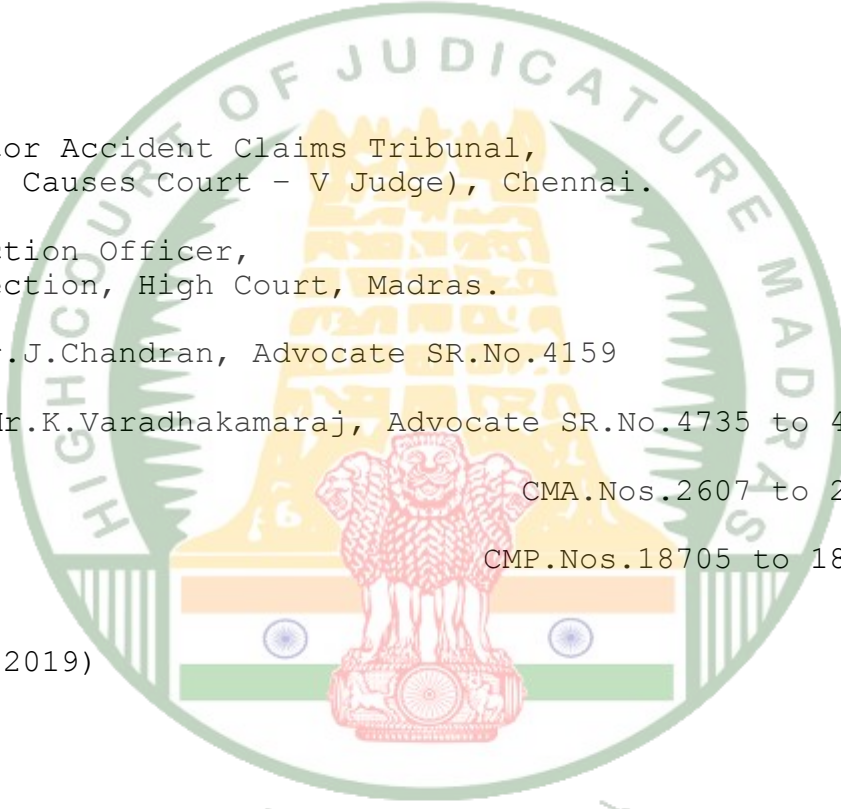
2. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.J.Chandran, Advocate SR.No.4159

+12cc to Mr.K.Varadhakamaraj, Advocate SR.No.4735 to 4746

CMA.Nos.2607 to 2618 of 2016
and
CMP.Nos.18705 to 18716 of 2016

RV(CO)
GMY(29/07/2019)

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital carved from a single block of dark soapstone. The lions are facing the four cardinal directions. The capital is set on a high, cylindrical abacus decorated with a frieze of animals in high relief. The entire emblem is surrounded by a green border containing the text 'HIGH COURT OF JUDICATURE MADRAS' in white capital letters. Below the emblem, the motto 'सत्यमेव जयते' is written in Devanagari script.

सत्यमेव जयते

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