

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.3528 of 2014 & 3529 of 2014
and
MP.Nos.1 and 1 of 2014

The New India Assurance Co. Ltd.,
No.91/106, 1st Floor,
Big Street, Tiruvannamalai.

.. Appellant in both CMAs/
2nd Respondent in Tribunal below

..Vs..

1.Rajammal

2.K.Syed Ameer ..Respondents in CMA.No.3528 of 2014/
Petitioner and 1st Respondent in Tribunal below

1.Selvi

2.Nadhiya

3.Minor Tamizharasan

4.Minor Saranya

(Minors represented by their
next friend mother Selvi)

5.Rajammal..1 to 5 Respondents in CMA 3529/14/Petitioners 1 to 5
and 1st Respondent in Tribunal below

6.K.Syed Ameer ..6th Respondent in CMA.No.3529 of 2014/
1st Respondent in Tribunal below

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section
173 of the Motor Vehicles Act, 1988 against the decree and
Judgment dated 25.09.2013 passed in MCOP.Nos.1487 of 2013 and
1541 of 2013 on the file of the Motor Accidents Claims
Tribunal / Special Subordinate Judge, Tirupattur.

For Appellant : Mr.C.Ramesh Babu
(in both CMAs)

For Respondents : Mr.PA.Sudeshkumar for R1
(CMA.No.3528/2014) No appearance for R2

For Respondents : Mr.PA.Sudeshkumar for R1 to R5
(CMA.No.3529/2014) No appearance for R6

COMMON JUDGMENT

The New India Assurance Company Limited, the second respondent in both the MCOP.Nos. 1487 of 2013 and 1541 of 2013 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Court, Tirupattur has filed the present appeal. The claimants filed the above MCOPs seeking compensation for the death of one Subramani and for the injuries sustained by one Rajammal respectively, in a road accident that took place on 28.05.2009.

2. The parties are referred as per their ranking in the claim petitions and at appropriate places, their ranks in the present appeals would also be indicated.

3. The case of the claimants is that on 28.05.2009, at about 06.40 pm, when the deceased Subramani and his mother Rajammal were travelling in a Hero Honda motorcycle bearing Registration No. TN 23 BY 3523 on Tirupattur- Vaniyambadi main road, a speeding light motor goods vehicle bearing Registration No. TN 23 AW 3666 hit the motorcycle, as a result of which, the deceased Subramani died on the spot and Rajammal sustained grievous injuries. According to the claimants in both MCOPs, the rash and negligent driving of the driver of the goods vehicle bearing Registration No. TN 23 AW 3666 belonging to one K.Syed Ameer (first respondent in both MCOPs) was the cause of the accident and that since, the said goods vehicle was insured with the New India Assurance Company Limited, both the owner and the insurer are jointly and severally liable to pay compensation to them.

4. The learned Motor Accidents Claims Tribunal / Special Subordinate Judge, Tirupattur after analysing the evidence on record, awarded a sum of Rs.1,93,658/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.1487 of 2013 and a sum of Rs.7,82,440/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.No.1541 of 2013. The Tribunal further observed that the liability of the Insurance Company as well as the owner of the goods vehicle is joint and several. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. In the appeal grounds, it is stated that, since the driver of the goods vehicle bearing Registration No. TN 23 AW 3666 did not have proper driving licence to drive the goods carriage vehicle on the date of the accident, the liability fastened on the Insurance Company cannot be sustained.

6. Heard the learned counsel appearing for the appellant

and the respondents.

7. It is to be noted that the goods vehicle is a light motor vehicle and in the decision in Jagdish Kumar Sood vs. United India Insurance Company Limited and others reported in 2018 ACJ 1018 = 2018 (2) TN MAC 63, the Honourable Supreme Court of India held that as per the Section 2(21) of the Motor Vehicles Act, 1988, the light motor vehicle would include a transport vehicle as per the weight prescribed under Section 2 (21) read with Sections 2(15) and 2(48) and such transport vehicles are not excluded from the definition of the light motor vehicle, by virtue of Amendment Act 54 of 1994. In the instance case, the driver had a driving licence to drive light motor vehicles and in the facts and circumstances, the findings of the Tribunal directing the owner as well as the Insurance Company to pay the compensation to the claimants cannot be said to be wrong. Therefore, both the appeals are liable to be dismissed.

8. In the result,

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

(ii) The orders passed by the Tribunal in both the MCOPs are upheld.

(iii) The New India Assurance Company Limited is directed to deposit the compensation awarded by the Tribunal ie., Rs.1,93,658/- (less the amount already deposited) 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 MCOP.No.1487 of 2013 on the file of the Motor Accidents Claims Tribunal/ Special Subordinate Court, Tirupattur within a period of four weeks from the date of receipt of a copy of this order.

(iv) The New India Assurance Company Limited is directed to deposit the compensation awarded by the Tribunal ie., Rs.7,82,440/- (less the amount already deposited) 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 MCOP.No.1541 of 2013 on the file of the Motor Accidents Claims Tribunal/ Special Subordinate Court, Tirupattur within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the claimants in both the MCOPs are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mbi

To

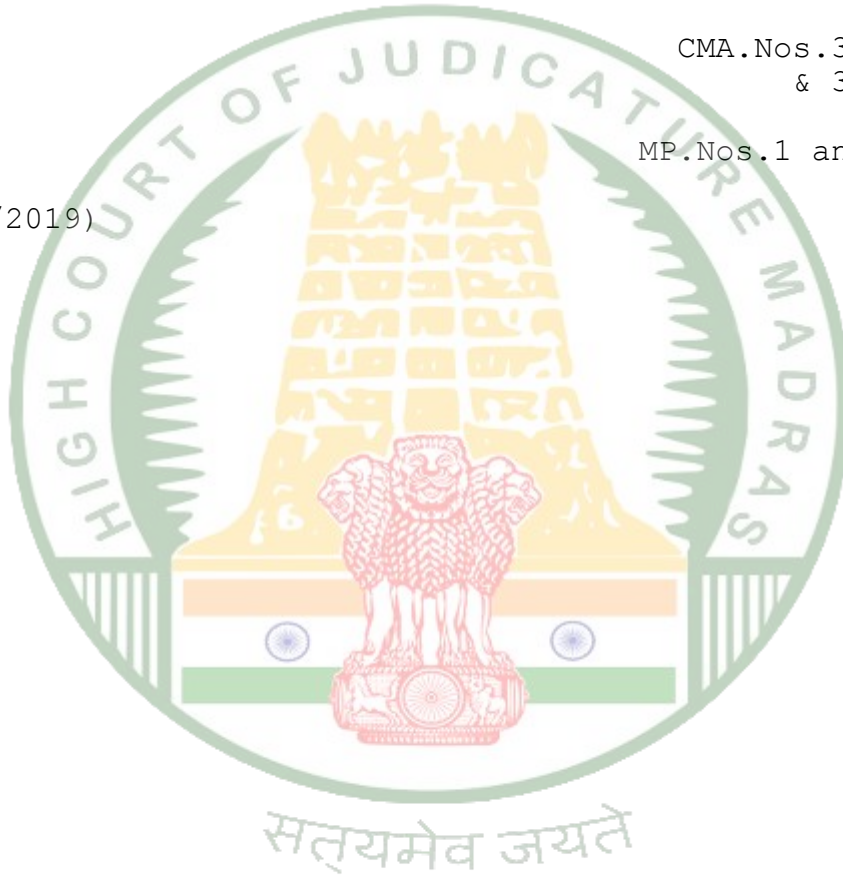
The Motor Accidents Claims Tribunal,
The Special Subordinate Court,
Tirupattur.

+1cc to Mr.PA.Sudeshkumar, Advocate SR.No.80514

+2cc to Mr.C.Ramesh Babu, Advocate SR.No.80396,80397

CMA.Nos.3528 of 2014
& 3529 of 2014
and
MP.Nos.1 and 1 of 2014

CP (CO)
GMY (30/10/2019)



WEB COPY