

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2336 to 2338 of 2011
and
M.P.Nos.1,1 & 1 of 2011

CMA.No.2336 of 2011

The National Insurance Company,
157, Karamadai Road,
Mettupalayam-641 301. ...Appellant/3rd respondent
Vs

1.S.Manickam ...1st Respondent/petitioner

2.K.Elanchezhian ... 2nd Respondent/1st Respondent

3.C.Nachiyappa Gounder ... 3rd Respondent/2nd Respondent

CMA.No.2337 of 2011

The National Insurance Company,
157, Karamadai Road,
Mettupalayam-641 301. ...Appellant/3rd respondent
Vs

1.Miss.Suganthi ...1st Respondent/1st petitioner

2.K.Elanchezhian ... 2nd Respondent/1st Respondent

3.C.Nachiyappa Gounder ... 3rd Respondent/2nd Respondent

CMA.No.2338 of 2011

The National Insurance Company,
157, Karamadai Road,
Mettupalayam-641 301. ...Appellant/3rd respondent
Vs

1.Minor.Kalpna ...1st Respondent/petitioner
Rep by her father Murugan

2.K.Elanchezhian ... 2nd Respondent/1st Respondent

3.C.Nachiyappa Gounder

... 3rd Respondent/2nd Respondent

PRAYER in CMA.No.2336: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.328 of 2005 dated 26.09.2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Erode.

PRAYER in CMA.No.2337: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.329 of 2005 dated 26.09.2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Erode.

PRAYER in CMA.No.2338: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment passed in M.C.O.P.No.330 of 2005 dated 26.09.2006 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Erode.

For Appellant in all CMAs : MR.J.Chandran

For Respondents in all CMAs : No appearance

COMMON JUDGMENT

The National Insurance Company Limited, who is the third respondent in the MCOP.Nos. 328 to 330 of 2005 on the file of the Motor Accidents Claims Tribunal / Principal Subordinate Court, Erode has filed the present appeals. The claimants filed the above MCOPs seeking compensation for the for the injuries sustained by the claimants respectively, in a road accident that took place on 01.08.2004.

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 01.08.2004, at about 10.00A.M., the 1st respondent in all the appeals were travelling in the Mitzubishi Van bearing Regn.No.TN-33-R-2059 on Chennimalai to Uthukuli road, Palatholuvu from west to east. The 2nd respondent herein had driven the said van. He drove the van in a rash and negligent manner and dashed against the stationed van, which was parked on the side of the road and thereby caused the accident. In the accident, the claimants have sustained injuries. According to the claimants in MCOPs, due to the rash and negligent driving of the driver/2nd respondent of the

Mitzubishi Van bearing Regn.No.TN-33-R-2059 belonging to third respondent, the accident had happened and the vehicle is insured with the third respondent. Hence, the owner and the insurer are jointly and severally liable to pay compensation to them.

4. The learned Motor Accidents Claims Tribunal/Principal Subordinate Court, Erode, after analysing the evidence on record, awarded a sum of Rs.42,700/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.328 of 2005 and a sum of Rs.33,800/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.329 of 2005 and a sum of Rs.1,77,500/- together with interest at the rate of 7.5% per annum to the claimant in MCOP.No.330 of 2005. The Tribunal further observed that the liability is on the Insurance Company, who shall pay the compensation to the claimants at the first instance and recover the same from the second and third respondents herein. Aggrieved over the orders passed by the Tribunal, the National Insurance 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 Mitzubishi Van bearing Regn.No.TN-33-R-2059 have no coverage of Insurance towards travelling of any passengers, the liability fastened on the Insurance Company, cannot be sustained.

6. The learned counsel for the appellant contended that the carriage of passengers in goods carriage was not made compulsory, has held the insurance company not liable in the event of the accident arising out of travelling passenger in a goods carriage vehicle.

7. Heard the learned counsel for the appellant and perused the materials available on record. Though notices were served and names been printed in the cause list, there is no appearance for the respondents.

8. As far as the quantum of compensation is concerned, the Tribunal has held that the claimants, along with 30 persons, who travelled as gratuitous passengers in the goods vehicle, are liable to get compensation. Since the terms of the policy have been violated by the owner and driver of the vehicle, they are liable to pay compensation to the claimant. But, in view of the decisions of the Hon'ble Supreme Court and the High Court of Madras relied upon by the claimant, the Tribunal has directed the Insurance Company to pay the compensation awarded to the claimants at the first instance and recover the same from the owner and driver of the vehicle.

9. It is seen that on 01.08.2004 at about 10.00 AM,

around 30 persons travelled in a van to go to a temple, which itself is an act of negligence and the claimants invited the accident by travelling in a goods vehicle, which was neither constructed nor adopted to carry passengers. There is no coverage of Insurance towards travelling of any passengers in the vehicle as per insurance policy Ex.R1, for want of any private contract of insurance to cover the passengers carried for hire, in order to fasten the liability against the Insurance company.

10. In the result, this Court comes to the conclusion that the claimants are entitled to get compensation only from the respondents 2 and 3, who are the driver and owner of the vehicle and the orders of the Tribunal, directing the Insurance Company to pay the award amount to the claimant at the first instance and recover the same from the respondents 2 and 3, are set aside. Accordingly, the Civil Miscellaneous Appeals stand allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
Principal Sub Court, Erode.

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

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+1cc to Mr.J.Chandra, Advocate, S.R.No. 9975

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and M.P.Nos.1,1 & 1 of 2011

RSI (CO)
GN(05/05/2021)