

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1777 and 2366 of 2013
and
M.P.Nos.1, 1 of 2013

M/s.National Insurance Co.Ltd.
2nd floor, 81-D, Cheety street
Opp. Bus stand
Tiruchengode.

.. Appellant in both CMAs/2nd
respondent

Vs

1.Murugan

.. 1st Respondent/
Petitioner in
CMA.No.1777 of 2013

1.Ramesh

.. 1st Respondent/
Petitioner in
CMA.No.2366 of 2013

2.M.Shanmugam

.. 2nd respondent/1st
Respondent in both
appeals

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.09.2011 made in M.C.O.P.Nos.364 & 366 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

In both CMAs.
For Appellant : Mr.J.Chandran
For R1 : Ms.T.Gayathri for
Mr.C.Kulanthaivel
For R2 : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the common award dated 27.09.2011 made in M.C.O.P.Nos.364 & 366 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

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

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.Nos.364 & 366 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari. The first respondent in both the appeals filed the said claim petitions claiming a sum of Rs.5,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 22.04.2009.

4.According to the 1st respondent in both the appeals, on the date of accident, i.e., on 22.04.2009 at about 12.30 p.m., while the claimants were travelling as cleaners in the lorry belonging to the 2nd respondent, the driver of the lorry drove the same in a rash and negligent manner, capsized and caused the accident. Due to the said impact, the 1st respondent in both the appeals fell down on the ground and sustained multiple injuries all over the body. Therefore, they filed the above claim petitions seeking compensation.

5.The 2nd respondent, owner of the lorry, remained exparte before the Tribunal.

6.The appellant/Insurance Company filed counter statements denying the averments made in the claim petitions and contended that at the time of accident, seven persons travelled in the lorry, while the permitted seating capacity of the lorry is only three in cabin, which is in violation of permit and policy conditions. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent in both the appeals. The appellant has also denied the age, avocation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent in both the appeals are excessive and prayed for dismissal of the claim petitions.

7.Before the Tribunal, both the 1st respondents examined themselves as P.W.1 & P.W.2, one Arul @ Arunkumar was examined as P.W.3 & Dr.R.Krishnasamy was examined as P.W.4 and marked 20 documents as Exs.P1 to P20. On the side of the appellant/Insurance Company, one Devarajan, Administrative Officer of the appellant was examined as R.W.1 and marked two documents as Exs.R1 and R2.

8.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 lorry belonging to the 2nd respondent and directed both the 2nd respondent as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.1,70,000/- and Rs.1,00,000/- as compensation to the 1st respondents respectively.

9. Against the said common award dated 27.09.2011 made in M.C.O.P.Nos.364 & 366 of 2009, the present appeals have been filed by the appellant/Insurance Company.

10. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to consider the averments made in the counter statements filed by them that the 2nd respondent, owner of the lorry permitted seven persons apart from driver and cleaner to travel in the lorry against the permitted seating capacity of three persons. The Tribunal ought to have held that owner of the lorry alone is liable to pay compensation as he violated permit and policy conditions. The Tribunal ought to have considered the evidence of R.W.1 and exonerated the appellant from its liability. The Tribunal failed to consider that the 2nd respondent or driver of the lorry were not examined to disprove the evidence of R.W.1 and ought to have held that the owner of the lorry alone is liable to pay compensation. The 1st respondents/claimants are rig lorry assistants. As per the Registration Certificate and insurance policy, the rig lorry assistant is not covered and the 1st respondents travelled in the lorry only as unauthorised passengers. The Tribunal ought to have disbelieved the evidence of P.W.4/Doctor, who has fixed 30% & 20% disability of the 1st respondents towards fracture of hip bone and fracture of wrist respectively. The total compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondents/claimants contended that the 1st respondents are rig lorry assistants and they are not gratuitous passengers. The appellant is liable to pay compensation to the 1st respondents as the policy issued by the appellant covers the claim made by the 1st respondents. The 1st respondents along with one Arul @ Arunkumar, who travelled in the lorry, examined themselves as P.W.1 to P.W.3 and deposed to that effect. The evidence of R.W.1, who is official of the appellant/Insurance Company, is not acceptable as the appellant has not proved that seven persons travelled in the lorry at the time of accident. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeals.

12. Though notice has been served on the 2nd respondent and

his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

13. Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondents and perused all the materials available on record.

14. It is the contention of the 1st respondents that at the time of accident, the 1st respondents along with one Arul @ Arunkumar travelled in the lorry belonging to the 2nd respondent. According to the 1st respondents, they are rig lorry assistants and travelled in the lorry in that capacity. To substantiate the said contention, the 1st respondents examined themselves as P.W.1 & P.W.2 and Arul @ Arunkumar was examined as P.W.3 and deposed to that effect. On the other hand, it is the contention of the appellant that at the time of accident, seven persons travelled in the lorry. The appellant examined R.W.1, officer of the appellant/Insurance Company, who is not an eye-witness to the accident. The appellant has not examined any independent eye-witness and produced any document to show that the accident occurred only due to travelling of seven persons in the lorry cabin in violation of permit and policy conditions. The Tribunal considering the evidence of 1st respondents as P.W.1 & P.W.2, P.W.3, contents of F.I.R. and absence of any contra evidence by the appellant held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and the appellant as insurer is liable to pay compensation to the 1st respondents. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. As far as quantum of compensation is concerned, the Tribunal after considering both oral and documentary evidence let in by the 1st respondents, awarded compensation to them, which is not excessive and the same does not warrant any interference by this Court.

16. In the result, both the Civil Miscellaneous Appeals are dismissed and the sum of Rs.1,70,000/- and Rs.1,00,000/- awarded by the Tribunal as compensation to the 1st respondents/claimants respectively along with interest and costs is confirmed. Both the 2nd respondent as well as the appellant/Insurance Company are directed to jointly and severally 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 1st respondents/claimants in both CMAs. are permitted to withdraw their respective award amount awarded by the Tribunal along with interest and costs, after adjusting the

amount already withdrawn, if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge
The Motor Accident Claims Tribunal
Sankari.

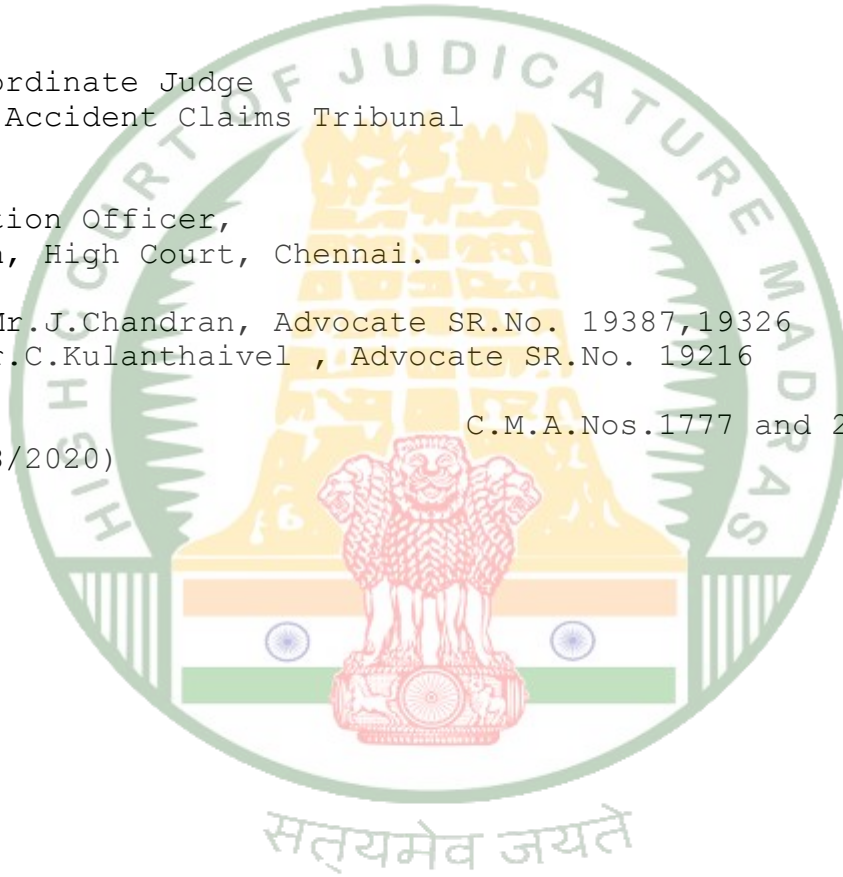
2.The Section Officer,
VR Section, High Court, Chennai.

+2ccs to Mr.J.Chandran, Advocate SR.No. 19387,19326

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 19216

C.M.A.Nos.1777 and 2366 of 2013

A.SK(21/08/2020)



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