

**CMA.Nos.2065, 2066, 2067, 2068, 2069, 2070,
2071 & 2072 of 2015 & 645, 646 & 648 of 2020**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**CMA.Nos.2065, 2066, 2067, 2068, 2069, 2070,
2071 & 2072 of 2015 & 645, 646 & 648 of 2020**
and
**M.P.Nos.1 of 2015 &
C.M.P.Nos.3868, 3871 & 3872 of 2020**

C.M.A.No.2065 of 2015

United India Insurance Co. Ltd.,
Christo Building, Bank Road,
Udhagamandalam – 643 001.
The Nilgiris.

.. Appellant

Vs.

1.Murugesan

S.Rajendran (Since Deceased)

2.M.Padmanaban

3.Sudha

4.Minor. Priyadharshini

5.Minor. Nandhakumar

.. Respondents

(Minors are rep. by their Guardian &
Next friend Mother Sudha)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 30.09.2011 made in M.C.O.P.No. 5 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Nilgiris.

In C.M.A.No.2065 of 2015 :

For Appellant : Ms.I.Malar

For R1 : Mr.K.Thilageswaran

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award dated 30.09.2011 made in M.C.O.P.Nos.5, 6, 7, 8, 13, 15, 16, 20, 4, 21 & 14 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Nilgiris.

2.All the appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant / United India Insurance Company is the 3rd respondent in M.C.O.P.Nos. 5, 6, 7, 8, 13, 15, 16, 20, 4, 21 & 14 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Nilgiris at Udhagamandalam. The claimants in M.C.O.P.Nos.4, 8 & 16 of 2010 filed the said claim petitions, claiming various amounts as compensation for the death of Parvathy, Sivakumar and Kuppusamy respectively who died in the accident that took place on 08.03.2009 and the claimants in M.C.O.P.Nos.5, 6, 7, 13, 14, 15, 20 & 21 of 2010 filed the said claim petitions, claiming various amounts as compensation for the injuries sustained by them in the same accident that took place on 08.03.2009. Pending claim petition, the first respondent / driver of the van, viz., Rajendran died and his legal heirs were impleaded as respondents 4 to 6.

4.According to the claimants, on the date of accident i.e. On 08.03.2009 at about 10.45 a.m., while the deceased and the injured persons were travelling in the Darzan Van belonging to the 2nd respondent from Udhagamandalam to Kodumudi to attend a betrothal function, the driver of the van drove the same in a rash and negligent manner and when the vehicle reached between 3 & 2 bridge at

Pudukulam bend, below barliar on the Udhagamandalam to Mettupalayam Main Road, due to high speed the driver (since deceased) lost his control and so the van after hitting the left side parapet, overturned and fell into a 40 feet gorge. Due to the said impact, some persons died and some of the persons suffered injuries. Hence the claimants have filed the above claim petitions claiming compensation against the respondents.

5.The respondents 1 and 2 filed separate counter statements and denied the averments made by the claimants in the claim petitions. The nature of accident, age, employment, income, nature of injuries and damages to property are all denied. It is stated that the first respondent is not the present owner of the vehicle and he has sold the same to one S.Sundaram on 13.08.2008. The 1st respondent has been engaged as temporary driver by the said S.Sundaram and he got valid driving license at the time of the accident. The said S.Sundaram is necessary party to the proceedings and therefore, the claim petitions are not maintainable and it is hit under the non-joinder of parties. The accident has occurred only due to the mechanical defect and hence, the respondents 1 and 2 are not liable to pay any compensation to the

claimants. They prayed for dismissal of the claim petitions as against them.

6.The 3rd respondent/United India Insurance Company being insurer of the Darzan van filed counter statement and denied the averments made by the claimants in the claim petitions. The nature of the accident, age, employment of the deceased and the injuries sustained have to be proved. The accident had occurred only due to overloading of passengers more than the permitted capacity and not due to any rash and negligent driving by the driver. It is further contended that the driver and 2nd respondent had violated the terms and conditions of the Insurance Policy and the Rules and Regulations of the Motor Vehicles Act and hence the 3rd respondent is not liable to pay any compensation to the claimants.

7.Before the Tribunal, on the side of the claimants, the claimants examined themselves as PW1 to PW10 and marked 44 documents as Ex.P1 to Ex.P44. On the side of the respondents, one document was marked as Ex.R1/Charge sheet.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the deceased/1st respondent of the Darzon Van belonging to the 2nd respondent and directed the respondents 2 to 6 to jointly and severally pay various amounts as compensation to the claimants.

9.Against the said common award dated 30.09.2011 made in M.C.O.P.Nos.5, 6, 7, 8, 13, 15, 16, 20, 4, 21 & 14 of 2010, the 3rd respondent / United India Insurance Company has come out with the present appeals.

10.Though the learned counsel appearing for the 3rd respondent/United India Insurance Company has filed these appeals challenging the liability fixed on the appellant as well as quantum of compensation awarded by the Tribunal, now she has restricted her arguments only in respect of negligence and liability.

11.The learned counsel appearing for the 3rd respondent / United India Insurance Company contended that the Tribunal failed to consider the fact that more persons travelled in the Darzan van than its seating

capacity, which is in violation of permit and policy conditions. The Tribunal failed to see that the Insurance Company has proved that at the time of accident more persons have travelled than its permitted seating capacity by marking Ex.R1/charge sheet. Therefore, the Insurance Company is not liable to pay any compensation and prayed for setting aside the award of the Tribunal.

12.Per contra, the learned counsel appearing for the claimants contended that the accident has occurred only due to rash and negligent driving by the driver of the vehicle belonging to the 2nd respondent and insured with the 3rd respondent/Insurance Company. Pending claim petition, the driver of the van namely Rajendran died and his legal heirs were impleaded as respondents 4 to 6. The claimants by both oral and documentary evidence have proved that the accident occurred only due to rash and negligent driving by the driver of the vehicle. The third respondent/Insurance Company has not proved by any acceptable evidence that at the time of accident more persons than permitted seating capacity have travelled in violation of permit and policy conditions. The Tribunal considering all the materials on record, held that the accident has occurred only due to the rash and negligent

driving by the driver of the van and the 3rd respondent/Insurance Company failed to prove that the claimants travelled in the vehicle more than the permitted seating capacity and awarded compensation in each of the claim petitions, which are not excessive and prayed for dismissal of the appeals.

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

14.It is the contention of the claimants that the accident has occurred due to rash and negligent driving by the driver of the Darzan Van belonging to the 2nd respondent and insured with the 3rd respondent. The claimants examined themselves as PW2/injured claimants in M.C.O.P.Nos. 4, 5, 6, 7, 8, 13, 14, 15, 16, 20 & 21 of 2010 and marked FIR which was registered against the driver of the vehicle. It is the contention of the 3rd respondent/Insurance Company that the accident has occurred only due to overloading of the vehicle. The claimants denied that the accident occurred due to overloading of the van. The 3rd respondent has not let in any evidence to prove the same

except relying on Ex.R1. The Tribunal considering the entire materials on record in proper perspective held that the accident has occurred only due to rash and negligent driving by the driver of the van. On such finding, the Tribunal fixed negligence on the part of the driver of the vehicle and liability on all the respondents. The 1st respondent died and his legal heirs were impleaded as respondents 4 to 6. Hence, the Tribunal directed the respondents 2 to 6 to pay compensation jointly and severally. There is no error in the said finding of the Tribunal warranting interference by this Court.

15. In the result, all the Civil Miscellaneous Appeals are dismissed. The compensation granted by the Tribunal is confirmed. The 3rd respondent/United India Insurance Company is directed to deposit the entire award amount 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 common judgment to the credit of M.C.O.P.Nos. 5, 6, 7, 8, 13, 15, 16, 20, 4, 21 & 14 of 2010 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Nilgiris at Udthagamandalam. On such deposit, the claimants are permitted to withdraw their respective award amount, as per the ratio of

apportionment fixed by the Tribunal, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petitions are also closed.

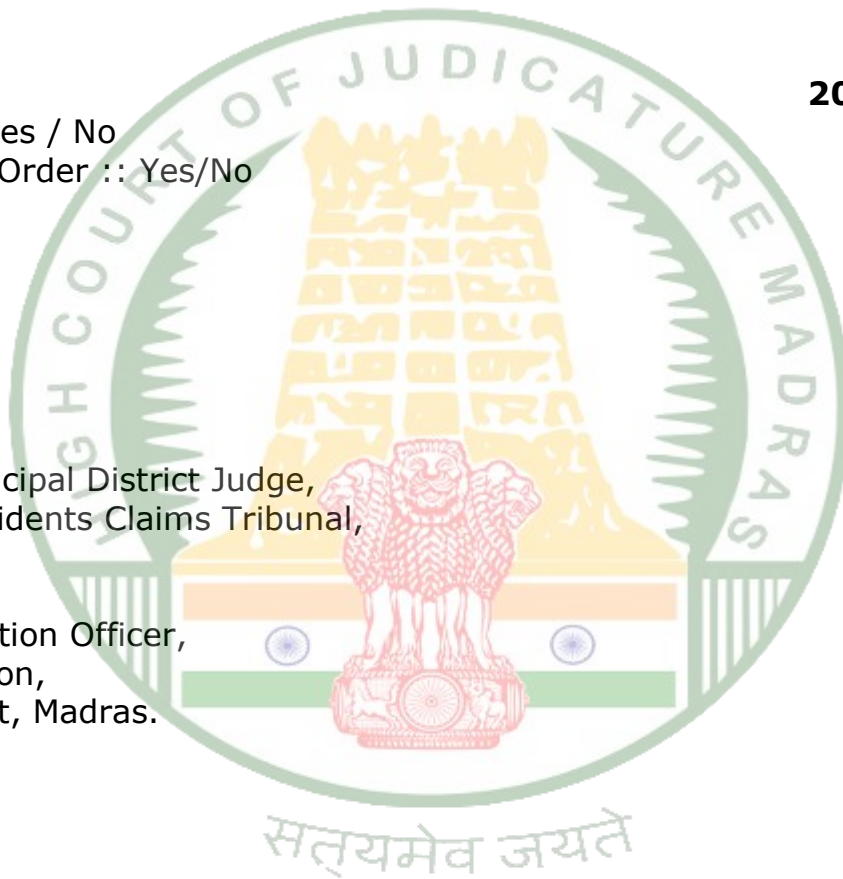
20.02.2020

Index :: Yes / No
Speaking Order :: Yes/No
vkr

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Nilgiris.

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

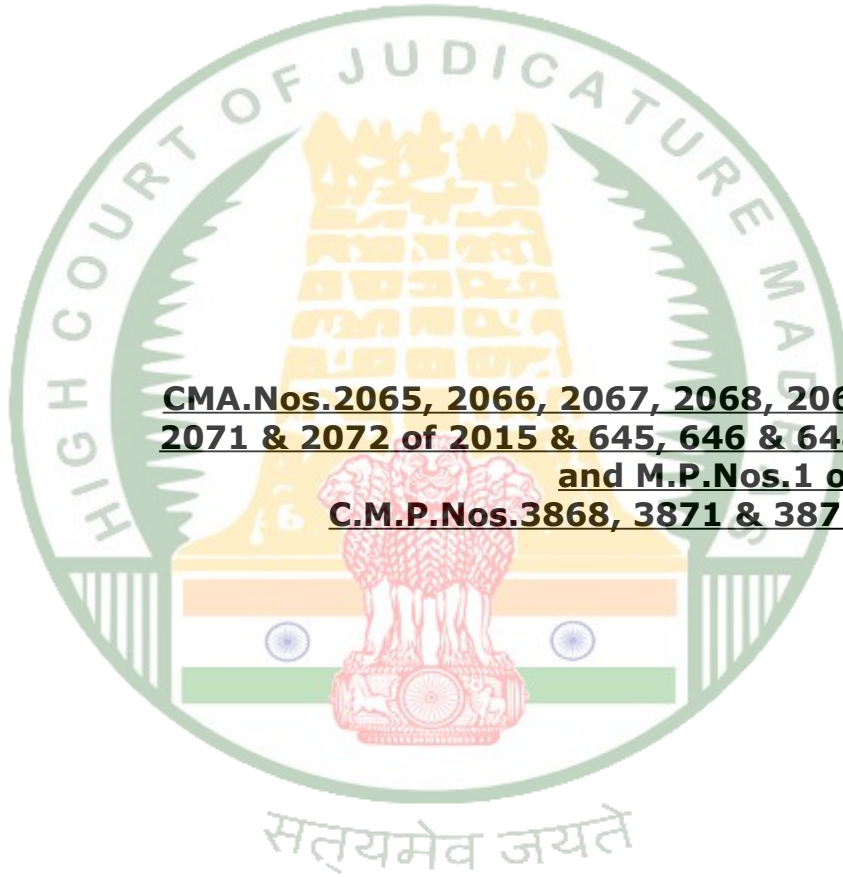


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V.M.VELUMANI, J.,

vkrr



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