

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.R.P(NPD)Nos.756 to 759 of 2009

The Branch Manager,
New India Assurance Co. Ltd.,
Tirupattur, Vellore District.

...Petitioner in all C.R.Ps

Versus

1.Natarajan

...R1 in C.R.P(NPD)No.756 of 2009

2.Kamala

...R1 in C.R.P(NPD)No.757 of 2009

3.Ramani

...R1 in C.R.P(NPD)No.758 of 2009

4.Selvi

...R1 in C.R.P(NPD)No.759 of 2009

5.M.Ahamed Basha

...R2 in all C.R.Ps

These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the judgment and decree dated 31.07.2003 made in M.C.O.P.Nos.543 to 545 & 552 of 2002 on the file of the Motor Accidents Claims Tribunal (First Additional District Judge), Dharmapuri District, Krishnagiri.

For Petitioner
in all C.R.Ps : Ms.P.Sobana Devi
for Ms.R.Sreevidhya

For Respondent - 1
in all C.R.Ps : No such person

Respondent - 2
in all C.R.Ps : ex-parte

COMMON ORDER

These Civil Revision Petitions have been filed challenging the common judgment and decree dated 31.07.2003, passed by the learned I Additional District Judge, Motor Accidents Claims Tribunal, Dharmapuri District, Krishnagiri in M.C.O.P.Nos.543 to 545 & 552 of 2002.

2. The brief facts of the case reads as follows:

On 13.03.2000, at about 12.00 p.m, the respondents 1 to 4 and other persons were started and proceeding to Hogenekal along with their goods intended to perform the death ceremony of one deceased Kannan, in the Mini Lorry bearing Registration No.TN 23 W 1065 belonging to the fifth respondent and insured with the petitioner

Insurance Company driven by its driver Mr.V.Govindaraj, on the Pennagaram-Hogenekal road. The respondents 1 to 4 and other persons have travelled in the said vehicle with the consent of the owner of the vehicle. When the said Mini Lorry reached near Kattu Valaivu, at about 04.30 p.m., the right side rear wheel of the vehicle got burst, due to which the vehicle capsized. Due to the impact, the respondents 1 to 4 sustained grievous injuries and were taken to Pennagaram Hospital for treatment. Hence, the aggrieved respondents 1 to 4 filed four Claim Petitions in M.C.O.P.Nos.543 to 545 & 552 of 2002 before the Motor Accidents Claims Tribunal, Dharmapuri District, Krishnagiri claiming compensation for the injuries sustained to them. On appreciation of the oral and documentary evidence produced before it, the Tribunal fixed the liability on the petitioner Insurance Company and awarded the compensation to the respondents 1 to 4 in the following manner:

S.No.	Name of the claimant	M.C.O.P.No.	Compensation awarded by the Tribunal
1	Natarajan	543 of 2002	Rs.8,300/-
2	Kamala	544 of 2002	Rs.4,400/-
3	Ramani	545 of 2002	Rs.4,600/-
4	Selvi	552 of 2002	Rs.4,400/-

The above compensation was awarded with interest at the rate of 9% per annum from the date of petition till the date of realization.

3. Aggrieved by the liability fixed and the quantum of compensation awarded by the Tribunal, the petitioner Insurance Company has filed the present Civil Revision Petitions before this Court.

4. The learned counsel for the petitioner Insurance Company submitted that the petitioner Insurance Company had already filed Civil Miscellaneous Applications in C.M.A.Nos.902 to 909 of 2009 challenging the very same common judgment dated 31.07.2003, passed by the learned I Additional District Judge, Motor Accidents Claims Tribunal, Dharmapuri District, Krishnagiri in M.C.O.P.Nos.546 to 551, 913 & 914 of 2002 and the same were allowed by this Court vide judgment dated 26.08.2019. The relevant portion of the judgment passed by this Court in C.M.A.Nos.902 to 909 of 2009 reads as follows:

" 7. All the injured deposed before the Tribunal that while they were travelling in the Mini Lorry bearing Reg.No.TN23 W 1065, the driver of the said vehicle drove

the same in a rash and negligent manner, due to which, the rear wheel of the said vehicle burst and thereby it got capsized. The said version of the injured has been denied on the side of the Insurance Company. The Tribunal, after verification of the First Information Report, came to the conclusion that the accident had occurred not due to the rash and negligent driving of the driver of the Mini Lorry, but due to bursting of tyre. Having rendered such a finding, the Tribunal has directed the owner of the vehicle and the appellant Insurance Company to pay the compensation to the claimants. Even though it was claimed by the Insurance Company before the Tribunal that there was violation of policy conditions by the owner of the Mini Lorry by allowing 35 persons to be travelled in the goods carriage vehicle, the Tribunal has not at all dealt with the said aspect in the judgment. As per the evidence of P.W.1, it is apparently clear that 35 persons travelled in the vehicle. When that be the case, it is purely a fault committed by the owner of the vehicle. In such view of the matter, this Court is of the considered view that the Insurance Company is not liable to pay any compensation to the claimants and only the owner of the vehicle has to pay the compensation to the claimants.

8. Since this Court came to the conclusion that the appellant Insurance Company is not liable to pay compensation, the compensation amounts awarded by the Tribunal need not be interfered with by this Court.

9. *In the result, the impugned judgment and decree dated 31.07.2003 are set aside and the Civil Miscellaneous Appeals are allowed. The Insurance Company is permitted to withdraw the amounts if any already deposited before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed. It is open to the claimants to proceed against the owner of the vehicle, in the manner known to law."*

5. Considering the facts and circumstances of the case, this Court is also of the opinion that the accident had occurred only due to the violation of policy conditions by the owner of the Mini Lorry who allowed 35 persons to be travelled in the goods carriage vehicle, however, without considering the said aspect, the Tribunal wrongly fixed the liability on the petitioner Insurance Company.

6. As rightly held by this Court in C.M.A.Nos.902 to 909 of 2009, the fifth respondent/owner of the Mini Lorry is the person who is liable to pay the compensation to the respondents 1 to 4 and not the petitioner Insurance Company. Therefore, this Court is inclined to allow the present Civil Revision Petitions.

7. Accordingly, these Civil Revision Petitions are allowed and the judgment and decree dated 31.07.2003, passed by the learned I Additional District Judge, Motor Accidents Claims Tribunal, Dharmapuri District, Krishnagiri in M.C.O.P.Nos.543 to 545 & 552 of 2002 is set aside. No costs. The petitioner Insurance Company shall withdraw the amount of compensation if any already deposited before the Tribunal. Further, liberty is given to the respondents 1 to 4 to proceed against the fifth respondent/owner of the Mini Lorry, in the manner known to law

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Index : Yes/No

To

The I Additional District Judge,
Motor Accidents Claims Tribunal ,
Dharmapuri District, Krishnagiri.

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KRISHNAN RAMASAMY, J.,

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