

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2004 of 2013

and M.P.No.1 of 2013

IFFCO Tokio General Insurance
Company Ltd.,
Branch Office
TULSI Chamber, 3rd Floor
No.195, Samy Road West
RS Puram, Coimbatore-641 002.
Coimbatore District.

... Appellant/3rd Respondent

...Vs...

1.S.Janaki ...1st Respondent/Petitioner

2.A.Shanmugasundaram

3. K.Selvam ...Respondents 2 &3/Respondents 1 &2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in MCOP.No.181 of 2007 dated 20.01.2012, on the file of the Motor Accident Claims Tribunal / Fast Track Court No.3, Dharapuram.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.Ma.P.Thangavel for R1

No Appearance for R2 & R3

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(This Appeal was taken up for hearing through Video Conferencing)

This appeal has been filed by the Appellant/Insurance Company challenging the award dated 20.01.2012 passed by the the

Motor Accident Claims Tribunal (Fast Track Court No.3, Dharapuram in MCOP.No.181 of 2007.

2. The only contention raised by the Appellant is that since the deceased was a gratuitous passenger in a goods vehicle which caused accident, the first respondent/claimant is not entitled to receive compensation from the Appellant. They have also challenged the finding of the Tribunal which has granted pay and recovery rights. Insofar as the quantum of compensation is concerned, the Appellant has not challenged the quantum of compensation fixed by the Tribunal.

3. Before the Tribunal, the claimant has filed 9 documents which were marked as Ex.P1 to Ex.P9 and one witness was examined, namely Janaki, mother of the deceased as PW1. On the side of the Appellant, no document has been filed, but, one witness was examined as RW1 who is their official, before the Tribunal.

4. In the claim petition, as well as in the deposition of PW1, it has been the consistent stand of the claimant that the deceased was a cleaner in the goods vehicle (insured vehicle) at the time of the accident. No contra evidence has been produced by the Appellant Insurance Company as seen from the impugned award as well as from the evidence available on record that the deceased was a gratuitous passenger and not a cleaner. As seen from the impugned award, the Tribunal has not given any finding that the deceased was a gratuitous passenger. This being the case, the Appellant/Insurance Company who is an insurer of the vehicle owned by the second respondent cannot be exonerated from liability. Therefore, the Tribunal ought not to have granted pay and recovery rights to the Appellants, but, instead should have made the Appellant/Insurance Company absolutely liable to compensate the claimant.

Conclusion:

5. For the forgoing reasons, there is no merit in this appeal and the pay and recovery rights granted by the Tribunal under the impugned award is also set aside. Accordingly, this appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited to the credit of MCOP.No.181 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS within a period of

two weeks thereafter. Consequently, connected miscellaneous petition is closed. No costs.

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Assistant Registrar

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Sub Assistant Registrar

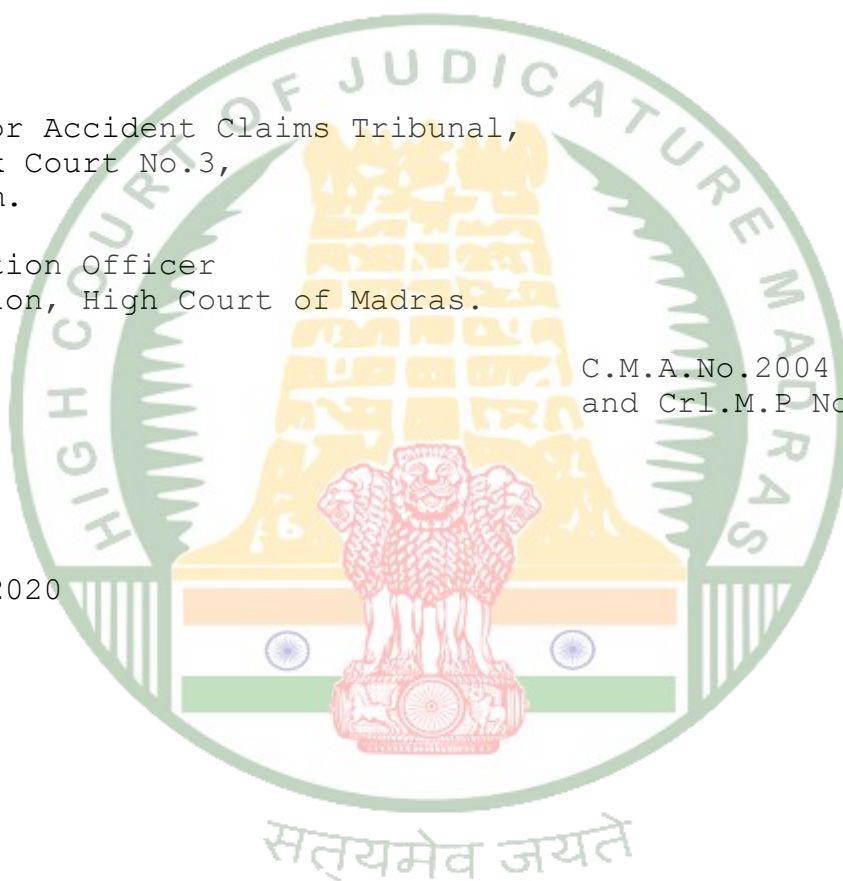
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To

1 The Motor Accident Claims Tribunal,
Fast Track Court No.3,
Dharapuram.

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

C.M.A.No.2004 of 2013
and Crl.M.P No.1 of 2013

SPD (CO)
VS 19.02.2020



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