

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.227 of 2012
and
M.P.Nos.01 & 02 of 2012

The Oriental Insurance Company Limited,
Shobha T.S.M.Complex,
Railway Station Road, Palakkad,

Having Office at
The Divisional Office,
Head Quarters Road,
Coimbatore-18.

... Appellant/3rd Respondent

Vs

1.Mr.Marannan ...Respondent 1 & 2/Petitioner 1 & 2
2.Tmt.Lakshmi
3.Mr.Annadurai
4.Mr.N.S.Karuppasamy ... Respondents 3 & 4 /Respondent 1 & 2
(Respondents 3 & 4 exparte in Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.649 of 2006, dated 26.08.2011, on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Coimbatore.

For Appellant : Mr.E.Rajadurai

For Respondents: Mr.Ma.P.Thangavel for R1 and R2

: No Appearance for R3 and R4

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J U D G M E N T

The instant appeal has been filed by the Insurance Company, challenging the award dated 08.07.2011, passed by the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Coimbatore, in M.C.O.P.No.649 of 2006.

2.The brief facts leading to the filing of the instant appeal are as follows:

On 03.10.2005, the deceased Kumar, Sundara Vadivel and Arumugam Chettiar were travelling in a mini lorry. The said lorry was carrying the vegetable load and came from Ottanchatram to Coimbatore. The deceased Kumar and Subbiah Gounder were sitting in the cabin and the others were sitting on the vegetable load in order to unload the same to Coimbatore. When the said lorry was nearing Ravythur pirivu, the driver of the lorry overtook another lorry, which was going in front of him. Suddenly he saw a van, which was coming in the opposite direction, i.e., west to east towards the lorry. Noticing the van coming in the opposite direction, the driver of the lorry lost his control due to over speed and dashed against the road side coconut tree. The said Kumar who was sitting in the cabin was severely injured and died on the spot itself.

3.The first respondent preferred a claim before the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore, in M.C.O.P.No.646 of 2006, seeking compensation of Rs.10,00,000/-

4.The Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore by its Award dated 26.08.2011, in M.C.O.P.No.649 of 2006, directed the appellant to pay a sum of Rs.4,33,500/- together with interest at the rate of 7.5% from the date of claim till the date of realization.

5.Aggrieved by the award dated 26.08.2011, passed in M.C.O.P.No.649 of 2006, the instant appeal has been filed by the Insurance Company.

6.Heard the learned counsel for the appellant and the learned counsel appearing for the first and second respondents and perused the materials available on record.

7.According to the learned counsel for the appellant, the only ground raised in this appeal is that the award of the Tribunal is contrary to law, weight of evidence and probabilities of the case and the Tribunal has erred in passing the award without properly considering the evidence on the side of the appellant that the deceased was a gratuitous passenger or giving a proper finding regarding liability. The Tribunal failed to appreciate that the appellant can have no liability regarding such passengers. Further, the Tribunal has failed to appreciate that the appellant has no liability for passengers carried in excess of seating capacity, that too on the body of the vehicle. The Tribunal ought to have exonerated the appellant of any

liability. The quantum of compensation awarded is excessive and prayed to allow this appeal.

8.The learned counsel for the first and second respondents would submit that the issue is now well settled by decisions of this Court as well as the decision of Hon'ble Supreme Court. He referred to the judgment of the Hon'ble Supreme Court in the case of S.Iyyapan Vs. United India Insurance Company Limited and another reported in (2013) 7 SCC 62 and submitted that in case of policy violation, the insurer will have to settle the claimant and recover the same from insured. He would further submit that under the impugned award, the interest of the appellant has been fully protected by granting pay and recovery rights to the appellant.

9.Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

10.This Court is in agreement with the submissions made by the learned counsel for the respondents 1 and 2.

11.In the result, there is no merit in the instant appeal in view of the settled law. Accordingly, the present appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed. However, the quantum of compensation awarded by the Tribunal is confirmed.

12.The appellant/Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal together with the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.649 of 2006 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.1, Coimbatore, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the respondents one and two / claimants are at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Motor Accident Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court No.1,
Coimbatore.

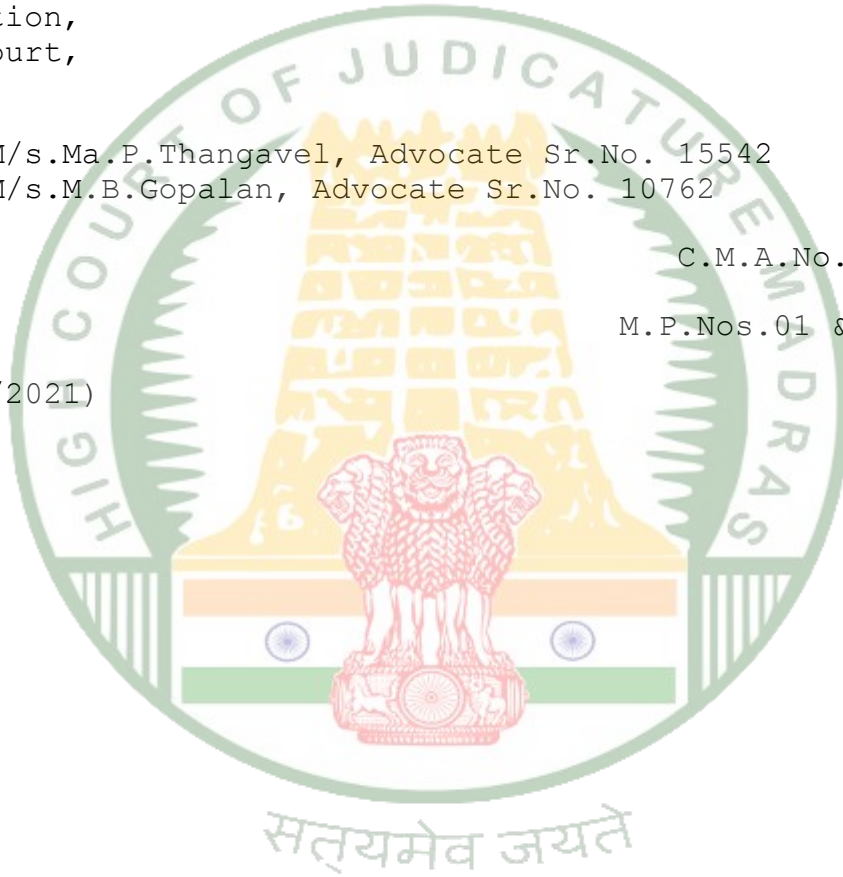
2.The Section Officer,
VR Section,
High Court,
Madras.

+1 cc to M/s.Ma.P.Thangavel, Advocate Sr.No. 15542

+1 cc to M/s.M.B.Gopalan, Advocate Sr.No. 10762

C.M.A.No.227 of 2012
and
M.P.Nos.01 & 02 of 2012

AD(CO)
RMP(16/04/2021)



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