

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2598 to 2603 of 2013

and

M.P.No.1(6) of 2013

The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishna Street,
Tiruvannamalai,
Divisional Office at Puducherry.

... Appellant in all the CMAs/ 3rd Respondent

Vs.

1. Prabu ...R1 in C.M.A.2598/2013/ Petitioner
2. Rajendran ...R1 in C.M.A.2599/2013/ Petitioner
3. Senthilkumar ...R1 in C.M.A.2600/2013/ Petitioner
4. Nagappan ...R1 in C.M.A.2601/2013/ Petitioner
5. Chandrasekar ...R1 in C.M.A.2602/2013/ Petitioner
6. Minor Balaji
rep. by his mother & next friend Jothi
...R1 in C.M.A.2603/2013/ Petitioner

2. S.Vajravelu ... 2nd respondent / 1st respondent

3. R.Karthikeyan ... 3rd respondent / 2nd respondent

4. S.Ramachandran ... 4th respondent / 4th respondent

5. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.547, Gandhi Road, Kancheepuram,
Divisional Office at Puducherry.
.... 5th respondent / 5th respondent

Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 05.03.2012 made in M.A.C.T.O.P.Nos.1013, 1014, 1015, 1016, 1017 & 1019 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Tindivanam.

For Appellant

<https://hcservices.ecourts.gov.in/hcservices> in all the CMAs : Mr.M.Krishnamoorthy

For R1
in all the CMAs : Mr.I.Charles

R2 & R3 - Exparte in all the CMAs

R4 & R5 - Given up in all the CMAs

Common Judgment

These Civil Miscellaneous Appeals have been filed against the Judgment and Decree dated 05.03.2012 made in M.A.C.T.O.P.Nos.1013, 1014, 1015, 1016, 1017 & 1019 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam.

2. The case of the appellant is that on 27.06.2008 at 9.30 p.m., the first respondents went to the Kadampuliyur Village to attend their relatives function. After attending the function, they were waiting for the bus opposite to Siga Higher Secondary School, Kadampuliyur Village, along with other village people to return their home. At that time, the fourth respondent's lorry bearing Registration No.TN-21-P-0675 was parked in the middle of the road and the driver got down from the lorry and went to take water for the lorry engine. Suddenly, the second respondent's Car (Tata Sumo) bearing Registration No.TN-23-U-8142 came in a rash and negligent manner and dashed against the Lorry and also against some persons who were waiting for the bus. Due to the impact, the first respondents sustained grievous injuries and immediately they were admitted for treatment in Government Hospital, Villupuram. In spite of the treatment, they became permanently disabled. Hence they filed a petition before the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam, claiming compensation under various heads.

3. Denying the allegations, the appellant insurance company filed a counter affidavit before the Tribunal stating that the accident was happened only due to the negligence of the fourth respondent's driver who parked the lorry bearing Registration No.TN-21-P-0675 in the middle of the road and not due to the rash and negligent driving of the second respondent's driver. Further, it has been stated that the driver of the second respondent had no valid driving licence at the time of accident and the first respondents have to strictly prove that the driver of the second respondent had possessed valid driving licence at the time of accident. Moreover, it has been stated that the alleged disability are not true and the amount of compensation claimed is highly excessive.

4. The fifth respondent insurance company which is the insurer of the fourth respondent's lorry also filed a counter affidavit denying the allegations stating that the accident was happened only due to the rash and negligent driving of the second respondent's driver and not due to the negligence of the fourth respondent's driver. Further, it has been stated that the driver of the fourth respondent had no valid driving licence at the time of accident and therefore the first respondents are not entitled to claim any compensation from them. Moreover, it has been stated that the alleged disability are not true and the amount of compensation claimed is exorbitant.

5. During the trial, on the side of the appellant and the second respondent, neither any witness was examined nor any document was marked. On the side of the first respondents/claimants, 12 witnesses were examined as PW1 to PW17 and 70 documents were marked as Exs.P1 to P70.

6. The Tribunal after considering the pleadings, oral and documentary evidence, allowed the petition in favour of the first respondents and awarded compensation under various heads.

7. Aggrieved by the award, the appellant insurance company has filed this appeal before this Court stating that the second respondent's driver had carried 15 persons in the insured car by violating the policy conditions, and while that being so, the Tribunal ought to have completely exonerated them and passed the award only against the second respondent.

8. Heard the learned counsel for the appellant and the learned counsel for the first respondents, and perused the materials available on record.

9. On perusal of the records, it is seen that the dispute is now only with regard to fixing the liability and as far as the quantum of compensation is concerned, there is no any dispute.

10. On perusal of the award dated 05.03.2012 passed by the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tindivanam, it is observed that the first respondents in order to prove that the second respondent's car driver was the cause for the alleged accident marked Ex.P1 the FIR copy. On perusal of the same, the Tribunal had found that on 27.06.2008, when the fourth respondent's driver was pouring water into the radiator by stopping the lorry on the side of the road, the second respondent's car came in the high speed and hit against the lorry. Due to the impact, two persons traveled in the car were dead. Further, the Tribunal had found

in the FIR that the accident was occurred only due to the rash and negligent driving of the driver of the second respondent. The appellant had not filed any document on his side denying the above statement, and therefore, the Tribunal based on the FIR had come to the conclusion that the accident was occurred only due to the rash and negligent driving of the second respondent's driver.

11. The second respondent is the owner of the Car (Tata Sumo), the fourth respondent is the owner of the Lorry, the appellant is the insurer of the Car (Tata Sumo) and the fifth respondent is the insurer of the Lorry. The contention of the appellant is that as per the policy, only 8 persons are allowed to travel in the alleged Car, but the second respondent's driver had carried 15 persons by violating the policy conditions and therefore they are not liable to pay the compensation and only the second respondent is liable to pay the same. But, on perusal of the order of the Court below, it is observed that the appellant had not placed any single evidence to show that 15 persons were traveled in the alleged Car, and therefore, the Tribunal had rejected their claim and allowed the petition in favour of the first respondents. Even before this Court, the appellant has not placed any evidence to prove their allegations, and therefore, this Court is not inclined to interfere with the award of the Court below.

12. Accordingly, these Civil Miscellaneous Appeals are dismissed and the appellant insurance company is directed to deposit the entire award amount fixed by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the second respondent. On such deposit being made, the first respondents/claimants are permitted to withdraw their respective award amount by filing a formal petition before the concerned Court, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

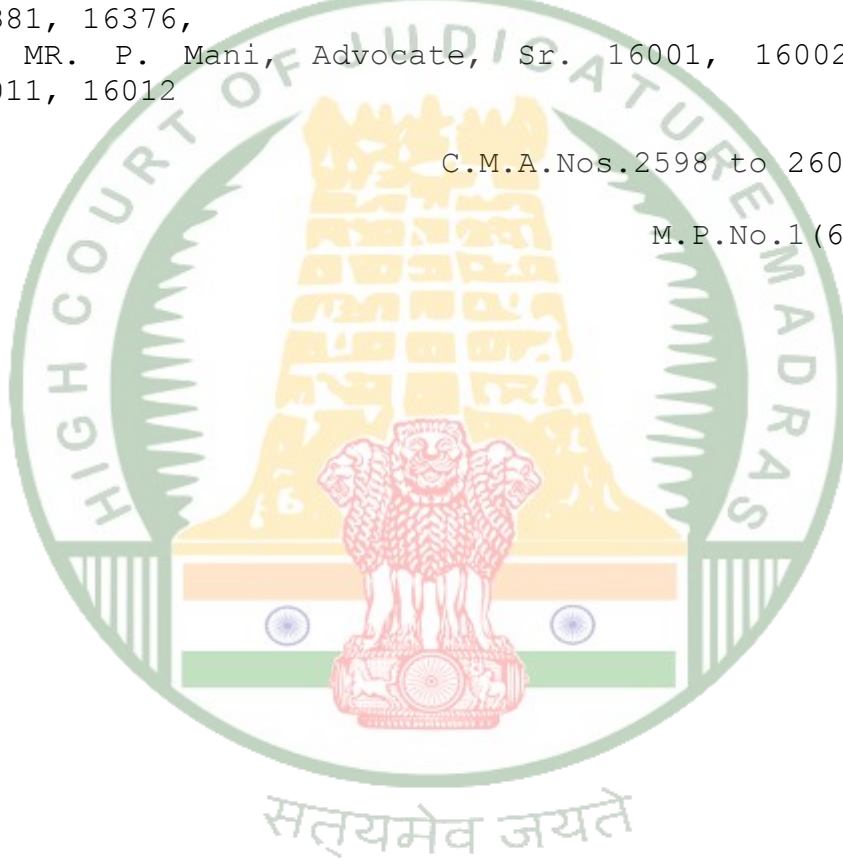
1. The Motor Accidents Claims Tribunal
(Additional Subordinate Judge),
Tindivanam.

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

5 ccs to Mr.M. Krishnamoorthy, Advocate, Sr. 16378, 16379,
16380, 16381, 16376,
6 ccs to MR. P. Mani, Advocate, Sr. 16001, 16002, 16010,
16003, 16011, 16012

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