

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NOS.399 TO 404 OF 2012

AND

MP.NOS.1, 1, 1, 1, 1 AND 1 OF 2013

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Branch Office, 3-L,
Siddhaveerappa Chetty Street,
Dharmapuri.

... Appellant in all CMAs/
2nd Respondent

vs.

1.Thangavel ...1st Respondent in CMA.No.399 of 2012/
Petitioner

1.Minor Sathyashree
Rep.by her next friend and father
Dharuman ...1st Respondent in CMA.No.400 of 2012/
Petitioner

1.M.Madhu ...1st Respondent in CMA.No.401 of 2012/
Petitioner

1.Neela ...1st Respondent in CMA.No.402 of 2012/
Petitioner

1.A.Dhanakodi ...1st Respondent in CMA.No.403 of 2012/
Petitioner

1.M.Muniyappan ...1st Respondent in CMA.No.404 of 2012/
Petitioner

2.M.K.Krishnan ...2nd Respondent in All CMAs/1st Respondent

3.K.Arul ...3rd Respondents all CMAs/3rd Respondent

Common Prayer:

Civil Miscellaneous Appeals filed under Section 173 of the
Motor Vehicles Act, 1988 against the Decree and Judgment dated
11.07.2011 in M.C.O.P.Nos.511, 512, 417, 418, 419 and 436 of

2008 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Judge/Additional Special Judge, Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
(In all CMAs)

For Respondents : R1-No appearance
(In all CMAs) R2 and R3 - Not ready in Notice

C O M M O N J U D G M E N T

The Oriental Insurance Company, the second respondent in MCOP.Nos.511, 512, 417, 418, 419 and 436 of 2008 on the file of the learned Motor Accident Claims Tribunal/Special Judge, Krishnagiri has filed the present appeal questioning their liability to pay compensation.

2. The first respondent/claimant (in all the petitions) filed the claim petitions under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation for the injuries sustained by them in a road accident that took place on 06.08.2007.

3. The case of the first respondent/claimant (in all the petitions) is that on 06.08.2007, at about 01.30 pm, they were travelling along with Tomato Baskets in a Mahindra Champion Minidor Auto bearing Registration No.TN 29 F 9559, near B.R.G.Madhepalli M.G.R. Statue and at that time, the driver of the said Auto drove the vehicle in a rash and negligent manner, without following any rules and on seeing a pothole, the driver suddenly swerved the vehicle towards the middle of the road, due to which, the vehicle capsized and they sustained grievous injuries. Therefore, they filed respective claim petitions seeking compensation for the injuries sustained by them.

4. The learned Special Judge, Krishnagiri after analysing the documents and evidences on record, awarded compensation of Rs.10,000/- each to the first respondent / claimant (in all the petitions) together with interest at the rate of 9% per annum. The Tribunal arrived at a conclusion that the appellant / Insurance Company is not liable to pay compensation to the first respondent / claimant. However, the Tribunal directed the appellant / Insurance Company to pay the award amounts in the first instance and then recover the same from the owner and the driver of the Minidor Auto bearing Registration No.TN 29 F 9559, who were jointly and severally held liable to compensate the injured. Challenging the said award dated 11.07.2011 passed in M.C.O.P.Nos.511, 512, 417, 418, 419 and 436 of 2008, the

appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal ought to have completely exonerated the appellant / Insurance Company and passed the award only against the owner of the Minidor Auto as he had committed breach of policy conditions and carried 22 passengers in the said Auto, without valid and effective driving licence to drive the vehicle. He further submitted that when the Tribunal held that the appellant / Insurance Company is not liable to compensate the injured persons, it erred in directing the Insurance Company to pay the compensation at the first instance and then recover the same from the owner and driver of the said Minidor Auto. He therefore prayed for exonerating the Insurance Company from paying compensation to the first respondent / claimant (in all the petitions).

6. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record.

7. From the materials available on record, it is seen that more than twenty persons travelled in the said Auto. After perusing the Insurance Policy, it is seen that the seating capacity is only 2 (including driver). As per the First Information Report (Ex.P1), 22 persons travelled in the vehicle at the time of accident. The Section 2 (14) of the Motor Vehicles Act clearly states that goods carriage vehicle is only for carrying goods and passengers are prohibited to travel in the same. Therefore, carrying 22 passengers in a good carriage vehicle is a clear violation of Policy Condition as well as Motor Vehicles Act, 1988. From the orders passed by the Tribunal, it is seen that the Tribunal held that the Insurance Company is not liable to pay compensation to the first respondent / claimant (in all the petitions). Therefore this Court is of the opinion that the Tribunal ought not have ordered pay and recovery in the instant case. In the facts and circumstances, the appellant / Insurance Company is exonerated from paying compensation to the first respondent / claimant (in all the petitions). Hence, the orders passed by the Tribunal in MCOP.Nos. 511, 512, 417, 418, 419 and 436 of 2008 are set aside, in respect of the pay and recovery alone.

8. Accordingly, the Civil Miscellaneous Appeals are allowed. The quantum of compensation awarded by the Tribunal is hereby confirmed. The owner of the Minidor Auto bearing Registration No.TN 29 F 9559 is directed to deposit the award amount determined by the Tribunal along with interest and costs, to the credit of MCOP.Nos. 511, 512, 417, 418, 419 and 436 of 2008 on the file of the Motor Accident Claims Tribunal / Special Judge,

Krishnagiri within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimants in MCOP.Nos.511, 417, 418, 419 and 436 of 2008 are permitted to withdraw the award amount along with interest and costs. The claimant in MCOP.No.512 of 2008 is a minor and therefore, her share of compensation is ordered to be deposited in any one of the nationalized banks until she attains majority. The appellant / Insurance Company is permitted to withdraw the amount, lying in the deposit to the credit of MCOP.Nos.511, 512, 417, 418, 419 and 436 of 2008, if the award amounts have already been deposited by them. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal/
Additional Subordinate Judge/Additional Special Judge,
Krishnagiri.
2. The Section Officer,
Vernacular Records Section,
High Court of Madras, Chennai.

+6cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.15382 to 15387

C.M.A.Nos.399 to 404 of 2012

and

MP.Nos.1, 1, 1, 1, 1 and 1 of 2013

RSK(CO)
CS/27/01/2021

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