

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. Nos. 2338 to 2349 of 2016

Divisional Manager

The New India Assurance Co. Ltd.

No. 42, Big Street

Tiruvannamalai.

... Appellant in all CMAs

Vs.

1.Kuppu	.. 1 st Respondent in CMA No.2338/2016
1.Alamelu	.. 1 st Respondent in CMA No.2339/2016
1.Ellamma	.. 1 st Respondent in CMA No.2340/2016
1.Minor Chitra	.. 1 st Respondent in CMA No.2341/2016
rep.by her grand father	
by NF Thangavel	
1.Valliamma	.. 1 st Respondent in CMA No.2342/2016
1.Virudhammbal	.. 1 st Respondent in CMA No.2343/2016
1.Dhanalakshmi	.. 1 st Respondent in CMA No.2344/2016
1.Lakshmi	.. 1 st Respondent in CMA No.2345/2016
1.Priya	.. 1 st Respondent in CMA No.2346/2016
1.Saroja	.. 1 st Respondent in CMA No.2347/2016
1.Asotha	.. 1 st Respondent in CMA No.2348/2016
1.Valli	.. 1 st Respondent in CMA No.2349/2016

2.Jaisingh .. 2nd Respondents in All CMAs

Comman Prayer in CMA Nos.2338 to 2349 of 2016:- Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and Decree dated 30/09/2011 made in M.A.C.T.O.P.Nos.53/2009, 54/2009, 55/2009, 57/2009, 216/2008, 217/2008, 218/2009, 219/2008, 220/2008, 222/2008, 224/2008 & 225/2008 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Judge, at Tiruvannamalai.

For Appellant : Mr. M.Krishnamoorthy (in all CMA's)

For Respondents: Mr. K.G.Senthil Kumar (For R1)
(in all CMA's)

No appearance (For R2) (in all CMA's)

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

The appeals are preferred against the common judgment and decree dated 30.09.2011 passed in M.C.O.P. Nos. 216 to 220, 222, 224, 225 of 2008 and 53 to 55, 57 of 2009 by the Motor Accident Claims Tribunal.

2. The appellant is the New India Assurance Company limited. The learned counsel appearing on behalf of the appellant mainly contended that the policy is Act-I policy and the vehicle met with an accident is a three wheeler load auto (goods vehicle) and therefore, the policy covers only the driver and none else. The driver alone is permitted to travel as per the registration certificate, as it is a load auto (goods vehicle). The said load auto (goods vehicle) met with an accident and several persons got injured and filed claim petitions. Near about 16 passengers travelled in the load auto (goods vehicle) unauthorizedly, which resulted in the accident and in fact, the vehicle capsized. Thus, the learned counsel for the appellant/ insurance company contended that the Tribunal has committed an error in fixing the liability on the appellant/ insurance company, despite the fact that the claimants are the unauthorized passengers and there is no coverage under the policy and a copy of the policy now produced before this Court, which is Exhibit R1 before the Tribunal, reveals that the nature of the vehicle is Mahindra Pickup Van and the type of body open. It is a load auto (goods vehicle) and the driver alone is permitted to travel in the vehicle and under these circumstances, the Tribunal arrived a conclusion that the appellant /insurance company is liable for payment of compensation.

3. The learned counsel appearing for the appellant/ insurance company reiterated that the Tribunal committed an error in fixing the liability, which is in violation of the statute as well as in violations of the policy conditions.

4. As per the provisions of the Motor Vehicles Act, over and above the permitted passengers cannot be allowed to travel in a goods carrier. Admittedly, the vehicle, which met with an accident, is a goods carrier. More specifically, three wheeler load auto(goods vehicle). This being the factum, the claimants number in 16 unauthorizedly travelled in the said vehicle. Thus, all those passengers are gratuitous passengers, not liable to claim any compensation from the insurance company as there is no contract.

5. The liability of the insurance company is based on the contract. The claimants must establish that there is a policy

coverage. In the absence of any such coverage, the insurance company cannot be held to pay compensation. This being the principles to be followed, the Tribunal though considered the facts and circumstances and further arrived a conclusion that the vehicle, which met with an accident is a load auto (goods vehicle) and further, found that the passengers are the unauthorized passengers, erroneously arrived to a conclusion that the appellant /insurance company is a liable to pay compensation. In the case of unauthorized passengers, the liability cannot be fastened on the insurance company and in such circumstances, the owner of the vehicle should indemnify the liability to pay compensation.

6. The learned counsel appearing on behalf of the respondent / claimants made a submission that the amount of compensation is meagre and therefore, pay and recovery can be ordered.

7. When there is a violation of the statutes and the policy conditions, the liability cannot be fastened on the insurance company and it is not a fit case to order pay and recovery. Thus, the claimants are at liberty to execute the decree against the owner of the vehicle for the purpose of recovering the compensation awarded. However, the appellant /insurance company is not liable to pay compensation as there is no policy coverage and all the claimants are unauthorized passengers. Under these circumstances, the findings of the Tribunal is perverted and the common judgment and decree dated 30.09.2011 passed in M.C.O.P. Nos. 216 to 220, 222, 224, 225 of 2008 and 53 to 55, 57 of 2009 is set aside and the Civil Miscellaneous Appeals stand allowed. No costs.

8. It is brought to the notice of this Court by the learned counsel for the appellant /insurance company that the entire award amount had already been deposited. Thus, the appellant / insurance company is permitted to withdraw the amount already deposited by filing appropriate application.

सत्यमेव जयते Sd/-

Assistant Registrar(CS V)

//True Copy//

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Sub Assistant Registrar

may
To

1.Motor Accidents Claims Tribunal
The Additional Subordinate Judge
Tiruvannamalai.

Copy to:

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

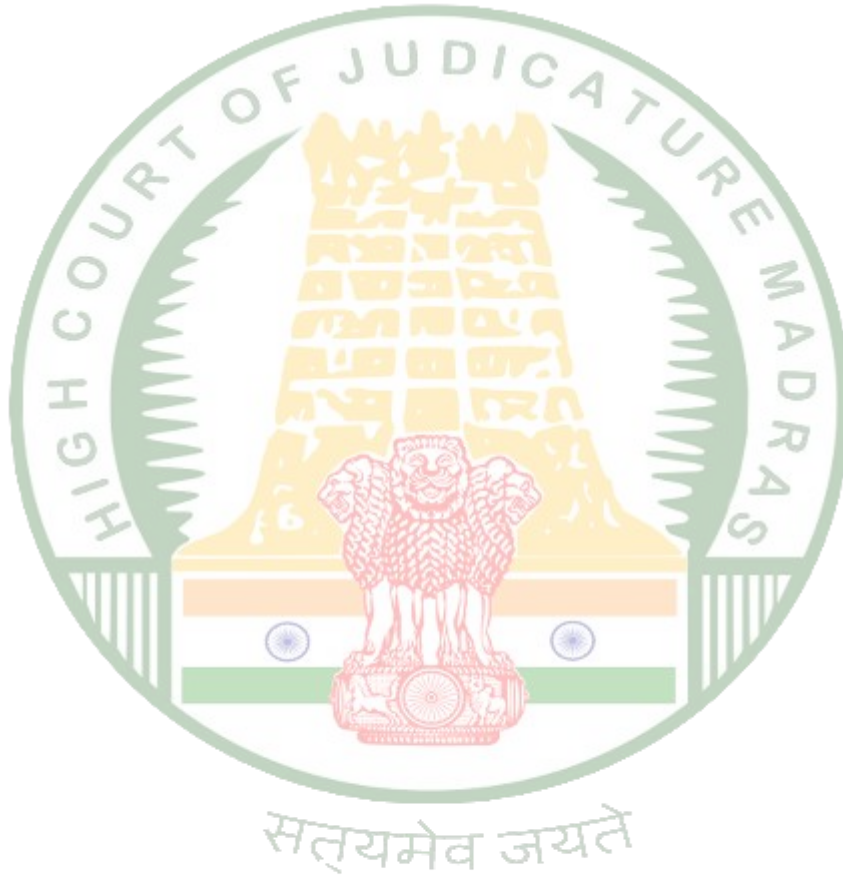
+1 cc to M/s.M.Krishnamoorthy, Advocate Sr.No. 23345

+1 cc to M/s.K.G.Senthil kumar, Advocate Sr.No. 23617

C.M.A. Nos. 2338 to 2349 of 2016

RP (CO)

RMP (12/05/2021)



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