

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NOS.709 TO 711 OF 2013

Kasinathan

.. Appellant in
C.M.A.No.709/2013

Pachaimmal

.. Appellant in
C.M.A.No.710/2013

Sivakumar

.. Appellant in
C.M.A.No.711/2013/
Petitioners

Vs.

1.Saravanan

2.The Divisional Manager
National Insurance Company Ltd.
No.19, Officers line
Vellore.

.. Respondents in all CMAs./
Respondents

Prayer:

These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.06.2012 made in M.C.O.P.Nos.48 to 50 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

In all CMAs.

For Appellants : Mr.F.Terry Chellaraja for Ms.M.Malar

For R2 : Mr.J.Chandran

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

The Civil Miscellaneous Appeals are filed challenging the portion of the award dismissing the claim petitions as against the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the common award

dated 18.06.2012 made in M.C.O.P.Nos.48 to 50 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai.

2.All the three appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellants are claimants in M.C.O.P.Nos.48 to 50 of 2009 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Tiruvannamalai. They filed the said claim petitions claiming a sum of Rs.5,00,000/-, Rs.20,000/- and Rs.20,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 22.11.2001.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 1st respondent, owner of the auto, to pay a sum of Rs.90,000/-, Rs.10,000/- and Rs.10,000/- as compensation to the appellants respectively and dismissed the claim petitions as against the 2nd respondent/Insurance Company being insurer of the said auto, as the appellants travelled in the goods auto as unauthorised passengers and thereby, the 1st respondent violated the policy and permit conditions.

5.Challenging the portion of the award dismissing the claim petitions as against the 2nd respondent/Insurance Company and not being satisfied with the amounts awarded by the Tribunal, the appellants have come out with the present appeals.

6.Though the learned counsel appearing for the appellants raised various grounds with regard to enhancement of compensation, at the time of arguments, he restricted his arguments only with regard to challenging the portion of the award dismissing the claim petitions as against the 2nd respondent/Insurance Company.

7.The learned counsel appearing for the appellants contended that the Tribunal failed to consider the evidence of the appellants in all the three appeals and awarded compensation only against the 1st respondent and erroneously dismissed the claim petitions as against the 2nd respondent/Insurance Company. The 2nd respondent/Insurance Company did not let in any evidence to disprove the contention of the appellants. In the absence of any evidence, the Tribunal ought to have fixed liability on the part of the 2nd respondent/Insurance Company and prayed for setting aside the portion of the award dismissing the claim petitions as against the 2nd respondent/Insurance Company.

8.The learned counsel appearing for the 2nd respondent/ Insurance Company made his submissions supporting the award passed by the Tribunal and prayed for dismissal of the appeals.

9.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

10. It is the contention of the appellants that on the date of accident i.e., on 22.11.2001, they travelled along with paddy and ground nut bags, as owner of the said goods, in the goods auto belonging to the 1st respondent. To substantiate the said contention, all the appellants examined themselves as P.W.1 to P.W.3 and marked the F.I.R. as Ex.P1. From the award of the Tribunal, it is seen that immediately after the accident, the appellant/P.W.3 in C.M.A.No.711 of 2013 has lodged a complaint stating that 13 persons, who came to attend the baby shower function of one Chandralekha, daughter of Annamalai Naicker, travelled in the goods vehicle sustained injuries in the accident. In the complaint, P.W.3 has not stated that the appellants travelled along with paddy and ground nut bags and travelled as owners of the goods. The Tribunal considering the contents of Ex.P1/F.I.R., has held that the contradictory evidence given by the appellants to the contents of F.I.R., is not acceptable. It is settled principle of law that the contents of F.I.R. is not a criteria for deciding the issue in the claim petitions. At the same time, the contents of F.I.R. cannot be brush aside, but can be taken into account to decide the issue in the claim petitions. The issue involved in the claim petitions is whether the appellants travelled as un-authorized passengers or owners of the goods. In the complaint given by the appellant in C.M.A.No.711 of 2013, he has not stated that the appellants travelled as owners of the goods, but they travelled to attend the baby shower function. The appellants have not produced any material to show that at the time of accident, they have travelled along with paddy and ground nut bags in the goods auto. The Tribunal considering the contents of F.I.R., did not accept the evidence of P.W.1 to P.W.3 and accepted the contention of the 2nd respondent/Insurance Company that the appellants travelled in the goods auto as un-authorized passengers and dismissed the claim petitions as against the 2nd respondent/Insurance Company. There is no error or perversity in the said finding of the Tribunal warranting interference by this Court.

11.For the above reason, all the three Civil Miscellaneous Appeals are dismissed and the sum of Rs.90,000/-, Rs.10,000/- and Rs.10,000/- awarded by the Tribunal as compensation to the appellants respectively, along with interest and costs are confirmed. The 1st respondent, owner of the goods auto, is

directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. These appeals are dismissed as against the 2nd respondent/Insurance Company. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Judicial Magistrate
The Motor Accident Claims Tribunal
Tiruvannamalai.

Copy To

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

+3cc to Ms.M.Malar, Advocate, S.R.No.22934, 22936 & 22397
+1cc to Mr.J.Chandran, Advocate, S.R.No.23297

C.M.A.Nos.709 to 711 of 2013

MP(CO)
CS/04/11/2020

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