

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2923 of 2019
C.M.P.No.15526 of 2019

The Manager,
M/s.Iffco Tokio General Insurance Company Limited,
Third Party Claims Cell,
Old No.195, New No.28,
1st & 2nd Floor, North Usman Road,
T.Nagar, Chennai-600 017.

..Appellant/2nd Respondent

vs.

1.E.Murugesan ..1st Respondent/Petitioner

2.P.Devarajan ..2nd Respondent/1st Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.421 of 2007 dated 09.01.2019 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Kanchipuram.

For Appellant : Mr.B.Raghavan
For Respondents : Mr.S.SriRam for R1
R2-Died

J U D G M E N T

The appeal on hand is preferred against the Judgment and Decree dated 09.01.2019 passed in M.C.O.P.No.421 of 2007.

2. M/s.Iffco Tokio General Insurance Company Limited is the appellant and the appeal is filed questioning the liability fixed.

3. The learned counsel appearing on behalf of the appellant mainly contended that the claimant was travelling as an unauthorized passenger in the goods vehicle and got injured. Thus, the Insurance Company is not liable to pay compensation to such unauthorized person, more specifically, while travelling in the goods vehicle. When there is no liability which can be fixed

against the Insurance Company, the Tribunal has committed an error in passing an award against the Insurance Company and therefore, the first respondent/claimant cannot claim compensation from the Insurance Company.

4. The learned counsel appearing on behalf of the first respondent/claimant opposed the contention by stating that the Tribunal has considered the facts and circumstances and arrived at a conclusion that the Insurance Company is liable to pay compensation only for three claimants who are all coolies and in respect of other two passengers, the Tribunal fixed the liability on the owner of the vehicle. Therefore, there is no illegality or otherwise. It is contended that when the policy coverage is available for three passengers in a Eicher van as per Ex.P4, there is no reason whatsoever to interfere with the award passed by the Tribunal and accordingly, the appeal is to be dismissed.

5. The accident occurred on 24.09.2006, at about 3.30 a.m. near Sriperumbudur Saveetha Engineering College, on Chennai-Bangalore National Highways. The C1 Sriperumbudur Police Station registered a case in Crime No.431 of 2006 under Sections 279 & 337 IPC. The factum regarding the accident was established by the claimants before the Tribunal and the policy coverage is also established. The fact remains that three passengers were permitted in the Eicher van. In the present case, it is established that three persons are already covered under the Insurance Policy issued by the appellant Company. These facts are considered by the Tribunal and the findings of the Tribunal are extracted hereunder:

In a case on hand, 5 passengers have been permitted to travel in Eicher van as revealed from Ex.P4 Charge sheet. The Insurance Company is liable to pay compensation for three passengers out of 5 passengers. 3 Award has to be satisfied by the insurance company in the descending order starting from the highest of the award. The Insurance Company is bound to cover the higher of the various award to deposit the higher of the amounts of compensation awarded to the extent of number of passengers covered by the insurance policy and in the Insurance Company can also recover the excess from the insured, because in a overloading vehicle, the owner has put the vehicle to a use not allowed by the permit under which the vehicle is used.

6. The above findings of the Tribunal are in-agree with the principles of the Hon'ble Apex Court as well as the High

Court. Therefore, the Tribunal has rightly fixed the liability only in respect of three passengers, as far as the appellant/Insurance Company is concerned. Thus, there is no perversity or error apparent. Accordingly, the Judgment and Decree dated 09.01.2019 passed in M.C.O.P.No.421 of 2007 stands confirmed and consequently, Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb

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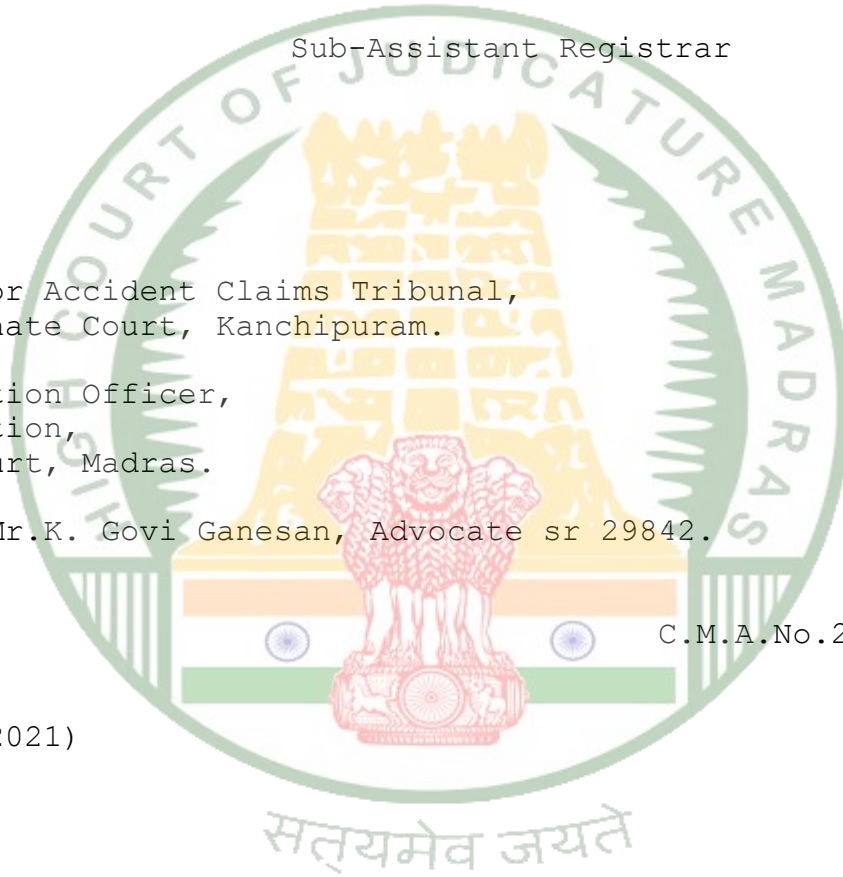
1.The Motor Accident Claims Tribunal,
Subordinate Court, Kanchipuram.

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

+1 CC to Mr.K. Govi Ganesan, Advocate sr 29842.

C.M.A.No.2923 of 2019

RSK(CO)
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