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C.M.A.Nos.1504 & 1505 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A.Nos.1504 & 1505 of 1998

and

C.M.P.Nos.15804 & 15805 of 1998

National Insurance Company Limited
Tirunelveli
2nd Floor, Arun Buildings
Swami Nelliappar High Road
Tirunelveli

... Appellant in both appeals

-vs-

1.S.R.Subramanian
2.Durai
3.Venkatachalapathy
4.M.S.A.Jabbar

... Respondents in
C.M.A.No.1504 of 1998

1.Indira

2.Venkatachalapathy

... Respondents in
C.M.A.No.1505 of 1998

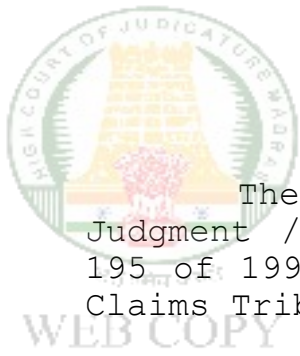
PRAYER (in C.M.A.No.1504 of 1998): Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment, dated 26.06.1998 and made in M.A.C.T.O.P.No.146 of 1992, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

PRAYER (in C.M.A.No.1505 of 1998): Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Decree and Judgment, dated 26.06.1998 and made in M.A.C.T.O.P.No.195 of 1992, on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi.

For Appellant : Mr.R.Rajamani
(in both appeals)

For Respondents : Mr.A.R.Nixon for R1
(in C.M.A.No.1504 of 1998) Mr.M.Saravanan for R2
No appearance for R3 & R4

For Respondents : Mr.S.N.Ravi Kumar for R1
(in C.M.A.No.1505 of 1998) No appearance for R2



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

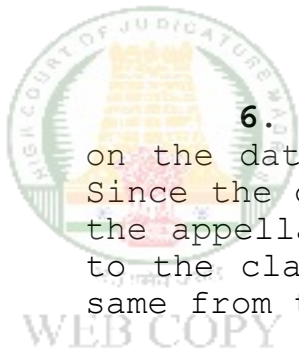
These civil miscellaneous appeals arise out of the common Judgment / Award, dated 26.06.1998, passed in M.C.O.P.Nos.146 and 195 of 1992 respectively, by the learned Sub Judge, Motor Accident Claims Tribunal, Tenkasi.

2. The claimants were passengers of a Mini Van bearing registration No.TDT 4167 belonging to the third respondent in C.M.A.No.1504 of 1998 and the second respondent in C.M.A.No.1505 of 1998 and insured with the appellant - Insurance Company. It is the case of the claimants that on 17.02.1992, when they were travelling in the Mini Van from Tenkasi to Ayakudi, it was driven by its driver in a rash and negligent manner and after travelling some distance, it capsized. Due to the accident, the claimants sustained injuries. Though the claimants claimed compensation of Rs.1,00,000/- and Rs.75,000/- respectively in the claim petitions, the Tribunal awarded Rs.25,450/- and Rs.17,000/- respectively along with interest at the rate of 12% per annum. Challenging the legality and validity of the Award passed by the Tribunal, these civil miscellaneous appeals have been filed by the Insurance Company.

3. Mr.R.Rajamani, learned counsel appearing for the appellant - Insurance Company, would urge that admittedly the vehicle involved in the accident is a Mini Van, a passenger vehicle, but the driver of the Van did not hold valid driving licence at the relevant point of time. Though this plea was raised in the counter affidavit, it was not properly answered by the Tribunal.

4. Per contra, Mr.M.Saravanan, learned counsel appearing for the second respondent in C.M.A.No.1504 of 1998, would contend that on the date of the accident, the driver was having licence to drive only light motor vehicles (LMV) and immediately thereafter, on 09.03.1992, he was issued with the licence to drive heavy motor vehicles (HMV) with batch endorsement. After taking this into consideration, the Tribunal has fastened liability on the appellant - Insurance Company and hence, the impugned Judgment does not require interference of this Court.

5. In the case on hand, the quantum of the compensation is not challenged, but the appeals have been filed challenging the liability. On a perusal of the records, it is seen that the claimants were passengers of a Mini Van and travelling from Tenkasi to Ayakudi. It is further seen that the driver of the vehicle was holding licence to drive light motor vehicles (LMV) at the time of the accident. This aspect has been considered by the Tribunal in Paragraph No.14 of the impugned Judgment. Despite the same, the entire liability was fastened on the appellant - Insurance Company.



6. It is not disputed that the vehicle had valid insurance on the date of accident and the claimants were also third parties. Since the driver of the Mini Van did not hold valid driving licence, the appellant - Insurance Company is liable to pay the award amount to the claimants at the first instance and thereafter, recover the same from the owner of the vehicle.

7. It is represented by in pursuance of the order passed by this Court on 03.11.1998, the appellant - Insurance Company has deposited the entire award amount with accrued interest to the credit of M.C.O.P.Nos.146 and 195 of 1992, on the file of the Motor Accident Claims Tribunal (Sub Court), Tenkasi, and the claimants were also permitted to withdraw 50% of the award amount. In view of the disposal of the civil miscellaneous appeals, the claimants are permitted to withdraw the remaining award amount and the appellant - Insurance Company is at liberty to recover the award amount from the owner of the vehicle by following due process of law.

8. In fine, the civil miscellaneous appeals are disposed of and the common Judgment / Award, dated 26.06.1998, passed in M.C.O.P.Nos.146 and 195 of 1992 respectively, by the learned Sub Judge, Motor Accident Claims Tribunal, Tenkasi, are modified to the effect as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,
Tenkasi.



C.M.A.Nos.1504 & 1505 of 1998

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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+1cc to Mr.R. Subramanian, Advocate Sr.No.20952

C.M.A.Nos.1504 & 1505 of 1998
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VB (27.11.2020) 4P 5C