



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2020

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)Nos. 1100, 1101, 1102 and 1103 of 2008
and M.P(MD) .Nos.1,1,1 and 1 of 2008

WEB COPY

C.M.A(MD) .No.1100 of 2008

The Branch Manager,
National Insurance Co., Ltd.,
175-A, Great Coitton Road,
Tuticorin 628 002.

... Appellant / 2nd Respondent

Vs.

1.Velmani

... 1st Respondent/ Petitioner

2.G.Ramamoorthy

... 2nd Respondents/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against common judgement and decree dated 06.02.2008 made in MCOP.No.230 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirunelveli.

C.M.A(MD) .No.1101 of 2008

The Branch Manager,
National Insurance Co., Ltd.,
175-A, Great Coitton Road,
Tuticorin 628 002.

... Appellant / 2nd Respondent

Vs.

1.Minor Nandhini

D/o.Natarajan

rep., through her mother and next friend

Somu Ammal

... 1st Respondent/ Petitioner

2.G.Ramamoorthy

... 2nd Respondents/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against common judgement and decree dated 06.02.2008 made in MCOP.No.231 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirunelveli.

C.M.A(MD) .No.1102 of 2008

The Branch Manager,
National Insurance Co., Ltd.,
175-A, Great Coitton Road,
Tuticorin 628 002.

... Appellant / 2nd Respondent



Vs.

1.Mahalingam

... 1st Respondent/ Petitioner

2.G.Ramamoorthy

... 2nd Respondents/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against common judgement and decree dated 06.02.2008 made in MCOP.No.232 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirunelveli.

C.M.A(MD).No.1103 of 2008

The Branch Manager,
National Insurance Co., Ltd.,
175-A, Great Coitton Road,
Tuticorin 628 002.

... Appellant / 2nd Respondent

Vs.

1.Minor Kalaiselvi
D/o.Chockanathan

... 1st Respondent/Petitioner

2.G.Ramamoorthy

... 2nd Respondents/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against common judgement and decree dated 06.02.2008 made in MCOP.No.233 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirunelveli.

In all appeals.

For Appellant :Mr.N.Murugesan, in all CMAs
For R2 :Mr.K.M.Vijaiyakumar,in all CMAs
For R1 : No appearance, in all CMAs

COMMON JUDGMENT

Assailing the common judgment and award passed by the Motor Accident Claims Tribunal, Tirunelveli in MCOP.Nos.230, 231, 232 and 233 of 2005, these appeals have been preferred by the Insurance company.

2. The claim petitions were filed seeking compensation of Rs.3,00,000/-, Rs.2,00,000/-, Rs.3,00,000/- and Rs.3,00,000/- respectively and after assessing evidence adduced by the parties, the tribunal has awarded Rs.1.28,726/-, Rs.38,661/-, Rs.62,220 and Rs.37,162/- respectively along with interest at the rate of 7.5% per annum.

3. According to the claimants, on 05.04.2004 at 05.45 hours, they were returning back to their home, after worshipping Lord Ayyappan at Sabarimalai in Ambassador car bearing Registration No.TCX-2822 belonging to the first respondent and insured with the



appellant/Insurance Company. It is their case that the car was driven in a rash and negligent manner, in a terrific speed and without observing any traffic rules and regulations and hence, the vehicle had gone out of control and dashed against the banyan tree standing in the eastern side of the road causing multiple injuries to the claimants. Immediately, they were taken to the Government hospital at Kadaiyanallur, where they were provided with first aid and thereafter, referred to Tirunelveli Medical College Hospital, where they took treatment as in-patients and thereafter, as out-patients. In this regard, a criminal case was registered against the driver of the car in Crime No.474 of 2004. It is to be noted that six persons travelled in the offending vehicle, only four injured claimants have filed claim petitions, contending that the driver of the car was responsible for accident and the insurer of the car is liable to pay compensation.

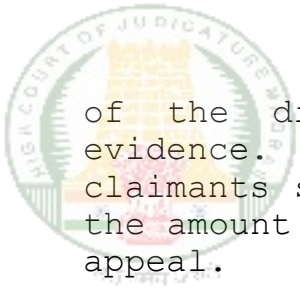
4. The appellant filed a detailed counter, wherein it was stated that the claimants and others traveled in a private car as paid passengers. The owner-cum-driver of the car allowed the claimants to travel in a car, which was used for commercial purpose. The policy for the vehicle does not cover the usage of the vehicle for higher or reward and hence, the Insurance company is not liable to pay compensation. According to the registration certificate and permit of the vehicle, only six persons can travel in the ambassador car, however, at the time of accident, eight persons travelled in violation of the permit conditions. The claim was excessive.

5. It is the submission of the learned counsel for the appellant, this appeal is preferred questioning liability and there is no dispute with regard to quantum.

6. During trial, on behalf of the claimants five witnesses were examined, among them P.W.5 is the Doctor Ramaguru, who issued disability certificate. Ex.P.1 to Ex.P.23 were marked. On the side of the insurance company, one Rameshbaby was examined as R.W.1 and Ex.R.1-copy of the policy was produced.

7. While deciding the issue of negligence, the tribunal took into consideration the oral evidence adduced by P.W.1 to P.W.4 and the documents Ex.P.1-FIR, Ex.P.3-report of the Motor Inspector, P.W.4-observation mahazar and Ex.P.5-charge sheet filed in the criminal case. The documents referred to above would show that in respect of the accident, a criminal case was registered against the driver of the car and also final report was also filed against him. Ex.P.6 shows that, he pleaded guilty and paid fine amount before the Judicial Magistrate, Thoothukudi in STC.No.2178 of 2005. On the basis of the above evidence, the tribunal held that the driver of the car was negligent at the time of accident.

8. Insofar as quantum, the claimants produced wound certificate, medical bills and disability certificate. In support



of the disability certificate, the doctor Ramaguru-P.W.5 gave evidence. After perusing the evidence, the tribunal found that the claimants suffered a lot and awarded compensation. As cited supra, the amount awarded by the Tribunal is not seriously disputed in this appeal.

WEB COPY

9. While deciding the liability, the tribunal found that the claimants have stated that they are the relatives of the owner of the car. To prove the defence taken by the appellant that the claimants travelled as paid passengers and the vehicle was used for commercial purpose, no evidence was adduced on behalf of the Insurance Company. R.W.1 in the cross-examination could not deny the suggestion that the claimants were the relatives of the owner of the offending vehicle and he pleaded ignorance. Likewise, the stand of the appellant that eight persons traveled at the time of occurrence is not supported by any evidence. The Insurance Company has taken a defence that the vehicle was covered with an Act policy and hence, the insurance company is not liable to indemnify, but in the counter no specific defence was taken by the insurance company. Hence, the tribunal held that unless a specific plea is taken, the insurance company cannot be permitted to lead evidence and that the insurance company is liable to pay compensation.

10. Mr.N.Murugesan, learned counsel for the appellant contended that the defence taken by the insurance company and the evidence adduced by the appellant was not properly appreciated by the tribunal. I am not impressed with the submission for the reason that the tribunal has given the finding on proper appreciation of evidence. I find no ground to interfere with the same.

11. For the foregoing reasons, the Civil Miscellaneous Appeals are dismissed confirming the orders of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirunelveli made in MCOP.Nos.230,231,232 and 233 of 2005 dated 06.02.2008. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk

To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal,

<https://hcservices.tn.nic.in/hcservices/>



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

WEB COPY
+4cc to Mr.N.Murugesan, Advocate Sr.No.23066 TO 23069

C.M.A(MD)Nos. 1100, 1101, 1102 and 1103 of 2008
26.11.2020

VB (20.01.2021) 5P 8C