BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.11.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.(MD)Nos.1581 & 1582 of 2007
and
C.R.P.(NPD)(MD)Nos.1750 to 1752 of 2007
and
M.P.(MD)Nos.1 to 1 of 2007(5 Nos)

The New India Assurance Co.Ltd.,
Through its Branch Manager,
Pillars Gate,
Opp. Anna Stadium,
Balamore Road,
Nagercoil. ... Appellant/2nd Respondent in C.M.A.(MD)Nos.1581 & 1582 of 2007
...Petitioner/2nd Respondent in C.R.P.(NPD)(MD)Nos.1750 to 1752 of 2007

Vs

1. High Court Durai
2. Vaikundaraj
3. Mayilammal ...1 to 3 Respondents/ Appellants 1 to 3
4. Arumuga Kani ... 4th Respondent/1st Respondent (in C.M.A(MD)No.1581/2007)

1. Selvi
2. Poolasankar ...Respondents 1 & 2/ Petitioners 1 & 2
3. Arumuga Kani ...3rd Respondent/1st Respondent (in C.M.A(MD)No.1582/2007)

(R2 declared major vide
Order of this Court dated 27/11/2020
in CMA(MD)No.1582/2007)

1. Radhika ...1st Respondent/Petitioner
2. Arumuga Kani ...2nd Respondent/1st Respondent (in C.R.P.(NPD)(MD)No.1750/2007)

1. Mariappan ...1st Respondent/Petitioner
2. Arumuga Kani ... 2nd Respondent/1st Respondent (in C.R.P.(NPD)(MD)No.1751/2007)

1. Tamil Selvi ...1st Respondent/Petitioner
2. Arumuga Kani ...2nd Respondent/1st Respondent
(in C.R.P.(NPD)(MD)No.1752/2007)

C.M.A(MD)Nos.1581 & 1582 of 2007 filed under Section 173 of the Motor Vehicles Act against the award dated 09.08.2007 and made in M.C.O.P.Nos.181 and 213 of 2006 respectively, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tirunelveli.

C.R.P(NPD)(MD)Nos.1750 to 1752/2007 filed under Article 227 of Constitution of India, against the award dated 09.08.2007 and made in M.C.O.P.Nos.178, 179 and 180 of 2006 respectively, on the file of the Motor Accidents Claims Tribunal, Principal District Court, Tirunelveli.

For appellant in

C.M.A.(MD)Nos.1581 & 1582 of 2007
C.R.P.(NPD)(MD)Nos.1750 to 1752 of 2007
: Mr.B.Vijay Karthikeyan

For R1 to R3 in
C.M.A.(MD)No.1581 of 2007 : Mr.T.Selvakumran

For R4 in
C.M.A.(MD)No.1581 of 2007 : No appearance

For R1 & R2 in
C.M.A.(MD)No.1582 of 2007: Mr.T.Selvakumran
For R3 in
C.M.A.(MD)No.1582 of 2007: No appearance

For R1 in all
C.R.P.(NPD)(MD)Nos.1750 to
1752 of 2007 : Mr.T.Selvakumran
For R2 in all
C.R.P.(NPD)(MD)Nos.1750 to
1752 of 2007 : No appearance

COMMON JUDGMENT

Inasmuch as the present batches of cases have been preferred against the common order dated 09.08.2007, passed by the Motor Accident Claims Tribunal, Principal District Court, Tirunelveli (in short, 'the Tribunal') in the Motor Accident Claims Original Petitions, arising out of the same accident that had occurred on 05.12.2005, they were heard together and are decided by this common judgment.

2.The brief facts of the case are as follows:

On the fateful day, ie. on 05.12.2005, at about 3.30 a.m., one Arumuga Pandi and others, were travelling in a Tata Sumo Car bearing Registration No.TN 76 A 9239 belonging to one Arumuga Kani and insured with the New India Assurance Company Limited, which is the appellant in C.M.A.(MD)Nos.1581 & 1582 of 2007 and the petitioner in C.R.P.(NPD)(MD)Nos.1750 to 1752 of 2007, from Tindivanam to Moolaikaraipatti. When the car reached near Pandarakulam, in the Tirunelveli - Madurai Main Road, the driver drove the vehicle at high speed in a rash and negligent manner and dashed against the parapet wall of a Bridge. Due to the said impact, the said Arumuga Pandi and one Kalarani died due to the injuries received, besides other persons sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving on the part of the driver of the car, the injured and the legal heirs of the deceased, filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA/CRP No.	***MCOP No.***	***Amount of compensation (Rs.)***
1581/2007	181/2006	9,35,000/-
1582/2007	213/2006	4,09,000/-
1750/2007	178/2006	7,000/-
1751/2007	179/2006	7,000/-
1752/2007	180/2006	7,000/-

These amounts have been awarded, with interest at the rate of 6% per annum from the respective dates of petitions. Giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the car, the Tribunal fixed the liability on the insurer as well as insured of the car to pay compensation to the claimants, jointly and severally. Challenging the same, the Insurance Company has filed the present Civil Miscellaneous Appeals and the Civil Revision Petitions before this Court.

3.The learned counsel for the insurance company submitted that the the deceased Arumugapandi, who is the husband of the owner of the vehicle, drove the vehicle in a rash and negligent manner and thereby invited the accident; and he was not the paid driver of the owner, for whom alone, there is a coverage under the policy and hence, the claimants cannot claim compensation against the insurer of the vehicle. The learned counsel further submitted that when the FIR was registered against the said Arumuga Pandi, who is the driver of the vehicle, the finding of the Tribunal that one Mahalingam had driven the Tata Sumo at the time of accident is unsustainable in law. It is also submitted that the owner of the car has violated the policy conditions by permitting more than five passengers to be travelled in the vehicle and therefore, the Insurance Company is not liable to pay any compensation to the claimants. As regards the quantum of compensation, the learned counsel submitted that the award granted by the Tribunal is excessive and exorbitant and hence, the same has to be reduced.

4.Per contra, the learned counsel appearing for the claimants submitted that the Tribunal has correctly considered the materials and evidence available on record and has passed the award, which does not require any interference in the hands of this Court.

5.Heard the learned counsel for the Insurance Company and the learned counsel for the claimants and also perused the materials available on record carefully and meticulously.

6.There is no grievance as regards the manner in which the accident had occurred. What was disputed herein is the liability of the Insurance Company to pay compensation.

7.A perusal of the award would reveal that based on the earlier statement given by one Mariappan / P.W.1, Ex.P1 FIR was registered against one Arumugapandi, who was said to have been the driver of the car, for causing the accident. Placing reliance on the same, RW2- Senthilkumar (Inspector of Police, Thalaiyuthu Police Station) has deposed that the vehicle involved in the accident was driven by Arumugapandi. However, Pws.1, 2, 4 and 6 / claimants have deposed in their evidence before the Tribunal that on 05.12.2005, the deceased and injured were travelling in the Tata sumo car bearing Regn.No.TN76 A 9239 from Tindivanam to Moolakaraipatti and the vehicle was driven by one Mahalingam S/o.Ganapathiya Pillai and at about 3.30am, on the early morning of 05.12.2005, the said Mahalingam drove the vehicle rashly and negligently and dashed against a parapet wall of a bridge and as a result of the same, two of the passengers died, besides other passengers receiving injuries. Thus, according to them, the vehicle was driven by one Mahalingam and not by Arumugapandi.

8.On the other hand, it was the case of the Insurance Company that at the time of accident, Arumugapandi was driving the Car and he succumbed to the injuries and died subsequently. Though they have cross examined the witnesses P.Ws.1, 2, 4 and 6, nothing was elicited from them to the effect that the vehicle was not driven by the said Mahalingam, but by Arumugapandi, who died subsequently due to the injuries received in the accident. Further, they have not chosen to examine any passenger who travelled in the Car at the time of accident to show that it was not driven by Mahalingam, but one Arumugapandi. That apart, R.W.2 was not the Investigating Officer of the case and hence, his evidence does not support the case of the Insurance Company. It is settled law that the FIR cannot be treated as conclusive proof as regards the rash and negligent driving of the driver and the relevancy of FIR could be limited to the occurrence of the accident and sustaining the injuries **[Refer: National Insurance Company Limited v. Islavath Chinnammal and others, 2006 (4) ACC 843**]. Therefore, in the absence of any such contra evidence, the Tribunal has correctly come to the conclusion that the vehicle involved in the accident was driven by one Mahalingam and due to his rash and negligent driving alone, the accident had occurred. The said finding of the Tribunal does not require any interference by this Court.

9.However, it is not in dispute that at the time of accident, more than permitted limit of six passengers were travelling in the Car, which is in violation of Ex.R1 permit and Ex.R2 insurance policy. As such, the Tribunal ought to have directed the Insurance Company to pay the compensation at the first instance and thereafter, recover the same from the owner of the vehicle, whereas the Tribunal has held that the Insurance Company and the owner of the vehicle were jointly and severally liable to pay compensation, without adopting the principle of 'pay and recovery'. In **Manuara Khatun vs. Rajesh Kr. Singh, [AIR 2017 SC 1204]**, it was held by the Supreme Court that the deceased, who was travelling in the goods vehicle can be termed as a gratuitous passenger and not covered under the insurance policy and therefore, the Insurance Company was exonerated, but directed to pay the amount of compensation to the claimants with the right to recover the same from the insured. Similar view has been taken in **Lal Singh Marabi v. N.I. Com., [2017 (5) SCC 82].** Therefore, the finding of the Tribunal with regard to the liability fixed on the Insurance Company, is hereby, modified by directing the Insurance Company to pay compensation to the claimants at the first instance and thereafter recover the same from the owner of the vehicle.

10.With respect to the quantum of compensation, the Tribunal after examining the oral and documentary evidence, has awarded the compensation to the respective claimants, along with interest at 6% per annum, which is fair, just and reasonable and therefore, the same does not requires any interference by this Court.

11.In the result, all the Civil Miscellaneous Appeals and the Civil Revision Petitions are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. Insofar as CMA.(MD)Nos.1581 and 1582 of 2007 are concerned, it is represented that the Insurance Company has already deposited the entire compensation amount and the claimants have also withdrawn 50% of the amount deposited; and that the minor claimants in CMA.(MD)No.1582 of 2007, have attained majority. In view of the same, the respondents/claimants are permitted to withdraw their respective shares, after deducting the amount already withdrawn, by them. Regarding CRP(NPD)(MD)Nos.1750 to 1752 of 2007, the Insurance Company is directed to deposit the entire compensation amounts along with interest and costs, as ordered by the Tribunal, after deducting 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 being made, the respondents / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. It is needless to state that the Insurance Company shall recover the compensation amount deposited in all the cases, from the owner of the vehicle, in the manner known to law.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal
Tirunelveli.

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court
Madurai.

+2 cc to Mr.T.Selvakumran , Advocate SR.No.22586, 22587
+1 cc to Mr.B.Vijay Karthikeyan , Advocate SR.No.22550

C.M.A.(MD)Nos.1581 & 1582 of 2007
and
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23.11.2020

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