



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. Nos.1013 of 2015 and 406 of 2020
and
CMP No.2460 of 2020

N.Kalaivani

.... Appellant in
C.M.A. No.1013 of 2015

The Branch Manager,
Bajaj Alliance General Insurance Co. Ltd.,
No.11, Peoples Park,
Office No.5-A
3rd Floor, Govt. Arts College Road,
Coimbatore.

... Appellant in
C.M.A. No.406 of 2020

versus

1. V.Srinivasan

... 1st Respondent in
C.M.A. No.1013 of 2015
& 2nd respondent in
C.M.A. No.406 of 2020

1. S. Kanchana

... 1st Respondent in
C.M.A. No.406 of 2020

2. The Branch Manager,
Bajaj Alliance General Insurance Co. Ltd.,
No.11, Peoples Park,
Office No.5-A
3rd Floor, Govt. Arts College Road,
Coimbatore.

... 2nd Respondent in
C.M.A. No.1013 of 2015

Prayer in C.M.A. No.1013 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 06.09.2013 made in MCOP No.1166 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Krishnagiri.

Prayer in C.M.A. No.406 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP No.35 of 2007, dated 10.01.2013 on the file of the Motor Accident Claims Tribunal, Principal Subordinate court, Krishnagiri.



For Appellant in C.M.A.No.1013 of 2015 : Mr.M.Sivakumar

For Appellant in C.M.A.No.406 of 2020
and

For R2 in C.M.A. No.1013 of 2015 : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan

For R1 in C.M.A. No.1013 of 2015
and

For R2 in C.M.A. No.406 of 2020 : Ex-parte

For R1 in C.M.A. No.1013 of 2015 : Service awaited

COMMON JUDGMENT

C.M.A. No.1013 of 2015 has been filed by the claimant seeking enhancement of compensation under the impugned award dated 06.09.2013 in MCOP No.1166 of 2007 passed by the learned Chief Judicial Magistrate, Motor Accident Claims Tribunal, Krishnagiri. The Tribunal under the impugned award exonerated the 2nd respondent / Insurance Company and directed the 1st respondent / owner of the vehicle to pay the appellant / claimant a compensation of Rs.40,000/- together with interests and costs.

2. C.M.A. No.406 of 2020 has been filed by the Insurance Company challenging the award dated 10.01.2013 passed by the Motor Accident Claims Tribunal, Principal Subordinate Court, Krishnagiri in MCOP No.35 of 2007 in favour of 1st respondent / claimant. The Tribunal under the impugned award directed the appellant / Insurance Company to pay the 1st respondent / claimant a compensation of Rs.1,18,500/- together with interests and costs and recover the same from the second respondent / owner of the vehicle. The appellant / Insurance Company has preferred this appeal questioning their liability to pay the compensation as according to them, the 1st respondent / claimant is an unauthorised passenger in the insured vehicle and therefore, she is not entitled for any compensation.

3. Since both these appeals arise out of the same accident, these appeals are disposed of by a common judgment.

4 a. The appellant /claimant in C.M.A. No.1013 of 2015 has filed this appeal on the following two grounds :-

i) The Tribunal ought not to have exonerated the liability of the Insurance Company and

ii) the quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation.

4b. The appellant / Insurance Company in C.M.A No.406 of



2020 has raised the ground that the 1st respondent / claimant, travelled as an unauthorised passenger and hence they are not liable to pay any compensation.

5. Heard the learned counsel on both sides and this Court has perused and examined the impugned award before the Tribunal. R1 in C.M.A. No.1013 of 2015 as well as 2nd respondent in C.M.A. No.406 of 2020 remained ex-parte before the Tribunal, hence notice to him is dispensed with.

6. The learned counsel for the Insurance Company, who is the appellant in C.M.A. No.406 of 2020 drew the attention of this Court to the order of this Court dated 18.09.2020 in connected appeal viz., C.M.A. No.1886 of 2014 involving the very same accident and would submit that another passenger, who had travelled in the very same goods vehicle, (insured vehicle) has also made a claim (MCOP No.37 of 2007) and this Court by its order dated 18.09.2020 in C.M.A. No.1886 of 2014 has allowed the appeal filed by the Insurance Company (the appellant in C.M.A. No.406 of 2020) by holding that the said claimants are gratuitous and unauthorised passengers and they are not liable for any compensation from the Insurance Company as it is a policy violation.

6. The learned counsel for the Insurance Company also drew the attention of this Court to the findings of the Tribunal under the impugned award and in particular, he referred to paragraph 12 of the impugned award, wherein, it has been categorically observed that the claimant, who is the appellant in C.M.A. No.1013 of 2015 as well as other claimants are gratuitous passengers travelling in the insured vehicle and despite the said finding has erroneously held the Insurance Company liable to pay the compensation.

7. The learned counsel for the Insurance Company also drew the attention of this Court to the Division Bench judgment of this Court in the case of Bharati AXA General Insurance Company Ltd. vs. Aandi and two others reported in 2019 3 ACJ 1975 and would submit that a gratuitous passenger is not entitled for any compensation from the Insurance Company. This Court in the connected CMA No.1886 of 2014 by its order dated 18.09.2020 while dealing with another claimant, who had also travelled in the very same goods vehicle (insured vehicle) has recorded the finding of the Tribunal that the claimants are unauthorised passengers and are not entitled for any compensation as they have not established that they have travelled in the goods vehicle (insured vehicle) as authorised representatives of the owner of the goods as stipulated under Section 147(1) (b) (i) of the Motor Vehicles Act.

8. In view of the settled position of law that a gratuitous passenger is not entitled for any compensation from the Insurance Company, this Court is of the considered view that the



Tribunal by total non application of mind to the settled position of law has directed the Insurance Company to pay the compensation to the claimant under the impugned award passed in MCOP No.35 of 2007 on 10.01.2013 which corresponds to CMA No.406 of 2020.

9. The judgment referred to in the impugned award dated 06.09.2013 in the case of United India Group Insurance Company Limited versus M/s.Sarvanan (Infirmary) Rep. By his wife NF S. Lalitha and Ravi reported in 2000 5 L.W. 339 has no relevancy for the facts of this case and the Tribunal has erroneously applied the said judgment and has erroneously awarded the compensation to the claimant payable by the Insurance Company.

10. Insofar as the first contention raised by the appellant / claimant in CMA No.1013 of 2015 is concerned, the Tribunal has rightly exonerated the second respondent / Insurance Company from any liability in view of the fact that the appellant / claimant travelled in the insured vehicle as a gratuitous passenger. The Tribunal has rightly rejected the claim as against the second respondent / Insurance Company and has passed the impugned award against the first respondent alone, who is the owner of the vehicle. Since, this Court has rejected the primary contention raised by the appellant with regard to the exoneration of the second respondent's liability by the Tribunal, there is no necessity for this Court to consider the second contention with regard to the quantum of compensation as the second respondent has been absolved of any liability.

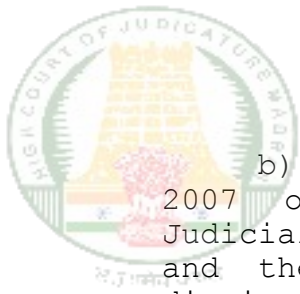
11. For the foregoing reasons the impugned award dated 10.01.2013 passed by the Tribunal in MCOP No.35 of 2007 (corresponds to CMA No.406 of 2020) with regard to pay and recovery rights to the appellant / Insurance Company has to be set aside.

12. In the result,

a) i) the Civil Miscellaneous Appeal No.406 of 2020 is allowed by setting aside the award passed by the Tribunal in MCOP No.35 of 2007 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Krishnagiri, by directing the appellant / Insurance Company to pay the compensation and recover the same from the second respondent / owner of the vehicle. It is made clear that the first respondent / claimant is entitled to execute the award as against the owner of the vehicle / second respondent for recovery of compensation amount awarded by the Tribunal by filing Execution Petition.

and

ii) The appellant / Insurance Company, in C.M.A. No.406 of 2020 is permitted to withdraw the amount, if any that has been deposited before the Tribunal by them by filing an appropriate application.



b) the award passed by the Tribunal in MCOP No.1166 of 2007 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Krishnagiri is confirmed by this Court and the Civil Miscellaneous Appeal No.1013 of 2015 stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To :

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Principal Sub Judge,
Krishnagiri.
3. The Section Officer,
V.R. section,
High Court, Madras - 104.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.24351

C.M.A. Nos.1013 of 2015 and 406 of 2020

PP(CO)
SB(25/11/2021)