



Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

Prayer in CMA No.3201 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
decree and judgment dated 30.07.2010 passed in MCOP No.276 of
2008 (Tindivanam Sub Court MCOP No.399 of 2007) by the
Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

Prayer in CMA No.3202 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
decree and judgment dated 30.07.2010 passed in MCOP No.277 of
2008 (Tindivanam Sub Court MCOP No.405 of 2007) by the
Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

Prayer in CMA No.3203 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
decree and judgment dated 30.07.2010 passed in MCOP No.278 of
2008 (Tindivanam Sub Court MCOP No.406 of 2007) by the
Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

Prayer in CMA No.3204 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
decree and judgment dated 30.07.2010 passed in MCOP No.291 of
2009 (Tindivanam Sub Court MCOP No.402 of 2007) by the
Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

Prayer in CMA No.3205 of 2012: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
decree and judgment dated 30.07.2010 passed in MCOP No.289 of
2008 (Tindivanam Sub Court MCOP No.401 of 2007) by the
Additional District Judge, Motor Accident claims Tribunal,
Fast Track Court No.II, Tindivanam.

In all CMAs

For Appellant	: Mr. M.D.Asif
For Respondents	: Mr. S.Arunkumar for R2
	Notice served to R1
	Notice unserved to R3



COMMON JUDGMENT

Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeals seeking direction to the insurance company to pay compensation to them.

2. The appellant in CMA No.3198 of 2012 and the claimant in MCOP No.461 of 2008 has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

The appellant in CMA No.3199 of 2012 and the claimant in MCOP No.288 of 2009 has filed a claim petition before the Tribunal seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

The appellant in CMA No.3200 of 2012 and the claimant in MCOP No.290 of 2009 has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

The appellant in CMA No.3201 of 2012 and the claimant in MCOP No.276 of 2008 has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

The appellant in CMA No.3202 of 2012 and the claimant in MCOP No.277 of 2008 has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

The appellant in CMA No.3203 of 2012 and the claimant in MCOP No.278 of 2008 has filed a claim petition before the Tribunal seeking compensation of Rs.1,00,000/- for the injuries sustained by her in a road accident that took place on 23.05.2007.

The appellant in CMA No.3204 of 2012 and the claimant in MCOP No.291 of 2009 has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.



The appellant in CMA No.3205 of 2012 and the claimant in MCOP No.289 of 2008 has filed a claim petition before the Tribunal seeking compensation of Rs.1,00,000/- for the injuries sustained by him in a road accident that took place on 23.05.2007.

3. The brief case of the claimant in all the cases is as follows: On 23.05.2007, the claimants along with others have travelled in a mini lorry bearing registration No.PY02I4465 along Tindivanam-Marakkanam Road and while the lorry nearing BSNL Tower at Branimesam, the driver of the mini lorry had driven the vehicle in a rash and negligent manner, thereby the lorry capsized and in view of the same, the claimants had sustained injuries all over their body. According to the claimants, the rash and negligent driving of the driver of the mini lorry was the cause of accident and since the owner of the mini lorry insured his vehicle with the second respondent, all of them are liable to pay compensation to them.

4. The Insurance company resisted the claim petition by filing the counter affidavit.

5. Before Tribunal, on the side of the claimants nine witnesses were examined as PW1 to PW9 and Ex.P1 to Ex.P34 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 to Ex.R3 were marked..

6. After analysing the evidence on record, the Tribunal has passed a common judgment and awarded compensation to the claimants under various heads as extracted hereunder.

MCOP No.461 of 2008

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	6000
2	Treatment and other expenses	2000
3	Pain and sufferings	2000
	Total	10000



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MCOP No.288 of 2009

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	7000
2	Treatment and other expenses	2000
3	Pain and sufferings	2000
	Total	11000

MCOP No.290 of 2009

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	25000
2	Treatment and conveyance	20000
3	Pain and sufferings	28000
	Total	73000

MCOP No.276 of 2008

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	30000
2	Treatment and other expenses	10000
3	Pain and sufferings	23000
	Total	63000

MCOP No.277 of 2008

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	20000
2	Treatment and other expenses	1000
3	Pain and sufferings	5000
	Total	35000



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MCOP No.278 of 2008

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	6000
2	Treatment and other expenses	2000
3	Pain and sufferings	2000
	Total	10000

MCOP No.291 of 2009

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	25000
2	Treatment and other expenses	5000
3	Pain and sufferings	13000
	Total	43000

MCOP No.289 of 2008

Sl No	Heads	Amount in Rs.
1	compensation for the injuries	7000
2	Treatment and other expenses	2000
3	Pain and sufferings	2000
	Total	11000

Aggrieved over the orders passed by the Tribunal, the claimants have filed the present appeal seeking direction to the insurance company to pay compensation to them.

7. Heard the learned counsel for the appellant and the counsel for the insurance company and I have perused the materials on record.

8. The learned counsel appearing for the appellant/ claimant submitted that the driver of the lorry



holding LMV driving license at the time of accident and had obtained a badge on 11.01.2008 and hence, the Tribunal ought to have accepted that driver is a qualified person to drive the vehicle. He further submitted that since the negligent on the part of the driver of the vehicle is proved and the second respondent/insurance company is the insurer of the vehicle, the principles of law can be applied to pay and recovery, as per the provisions of the Motor Vehicles Act and also the decisions of the Honourable Supreme Court. Therefore, he prayed to allow the appeals.

9. The learned counsel appearing for the second respondent/ insurance company submitted that the vehicle involved in the accident is a goods vehicle and the claimants were travelled as unauthorised passengers and there is a violation of policy condition and therefore, the insurance company cannot be held liable to pay compensation to the claimants. He further submitted that the Tribunal has rightly fixed the liability on the owner and the driver of the vehicle to pay compensation to the claimants and the above findings does not warrants any interference by this court.

10. Now the point for consideration is whether the insurance company is liable to pay compensation to the claimants.

11. POINT

As far as the quantum of compensation awarded by the Tribunal is concerned, the claimants have not raised any grounds to enhance the compensation in the appeal. Their only contention is that since the owner of the vehicle insured his mini lorry with the second respondent/ insurance company, both are liable to pay compensation to the claimants and hence, the Tribunal ought to have directed the insurance company to pay the compensation to the claimants at the first instance and then recover the same from the owner of the vehicle, whereas, the Tribunal directed the driver and the owner of the vehicle to pay compensation to the claimants.

12. It is not disputed by the claimants that on the date of accident, totally twenty persons had travelled in the mini lorry, including the claimants. It is the contention of the insurance company that the vehicle is intended solely for the purpose of carrying goods and as per the permit condition, only the driver and the cleaner are permitted to travel in the vehicle. According to them, the claimants and others have travelled in the vehicle as unauthorised passengers and hence, they are not liable to pay compensation.



In support of his arguments, she relied upon a decision in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018, wherein, a Division Bench of this court, after analysing various judgments of the Honourable Supreme Court has held thus.

50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

In the light of the decisions of the Honourable Supreme court as well as the decision of this Court, there is no grounds to fasten liability as against the insurance company. Therefore,



the order passed by the tribunal directing the owner and driver of the mini lorry to pay compensation to the claimants is liable to be confirmed. Accordingly, the point is answered and the appeal fails.

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12. In fine,

(i) All the civil miscellaneous appeals are dismissed. No costs and the orders passed by the Tribunal is upheld.

(ii) The entire compensation, as awarded by the Tribunal shall be paid by the owner and driver of the mini lorry to the claimants.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mst
To

1. The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.II, Tindivanam.

Copy to
The Section Officer, V.R. Section,
High Court, Madras 104.

+1 CC to Mr.S. Arun Kumar, Advocate sr 18369.

CMA No.3198 to 3205 of 2012

SMI (CO)
SP(12/01/2022)