



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25.03.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)Nos.1037 and 1038 of 2013and

MP(MD)Nos.1 and 1 of 2013

(1)CMA(MD)No.1037 of 2013:-

The Branch Manager,
The Oriental Insurance Company Limited,
24-E. 12-A, Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli.

: Appellant/2nd Respondent

Vs.

1.Thirumal
2.Muthulakshmi
3.Ravichandran
4.Ramasamy

: R1 and R2/Petitioners

: 3rd Respondent/1st Respondent: 4th Respondent/3rd Respondent

(R3 and R4 remained ex-parte
before the lower court)

5.The Branch Manager,
Oriental Insurance Company Limited,
D.No.4, Head Quarters Road,
R.V.R Building, IInd Floor,
Coimbatore-641 018.

: 5th Respondent/4th Respondent

(The 5th Respondent is given up)

PRAYER:- Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act, 1988 against the award passed
by the Motor Accident Claims Tribunal (Sub Court), Valliyoor, made
in MCOP No.152 of 2010, dated, 23.01.2013.

For Appellant : Mr.K.Bhaskaran
For R1 and R2 : Mr.D.Balamurugapandi
For 3rd Respondent : Mr.B.Brijesh Kishore
For 4rd Respondent : Mr.J.Bharathan
For 5th Respondent : Given up

(2)CMA(MD)No.1038 of 2013:-

The Branch Manager,
The Oriental Insurance Company Limited,
24-E. 12-A, Sivasakthi Shopping Complex,
S.N.High Road,



Tirunelveli.

1. Babu
2. Ravichandran
3. Ramasamy

: Appellant/2nd Respondent
Vs.
: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent
: 3rd Respondent/3rd Respondent

(R2 and R3 remained ex-parte
before the lower court)

4. The Branch Manager,
Oriental Insurance Company Limited,
D.No.4, Head Quarters Road,
R.V.R Building, IInd Floor,
Coimbatore-641 018.
(The 4th Respondent is given up)

: 4th Respondent/4th Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Sub Court), Valliyoor, made in MCOP No.24 of 2011, dated, 23.01.2013.

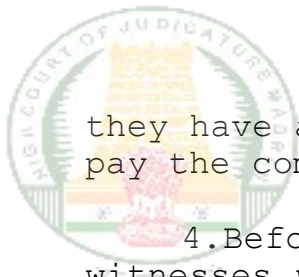
For Appellant	: Mr.K.Bhaskaran
For 1 st Respondent	: Mr.D.Balamurugapandi
For 2 nd Respondent	: Mr.B.Brijesh Kishore
For 3 rd Respondent	: Mr.J.Bharathan
For 4 th Respondent	: Given up

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the common award passed by the Motor Accident Claims Tribunal (Sub Judge), Valliyoor, made in MCOP Nos.152 of 2010 and 24 of 2011, dated, 23.01.2013.

2. The short facts of the case is that 06.05.2010 at about 2.00 am, the deceased Rajagopal along with two others were travelling in the TATA ACE TN-72-AY-2882 carrying materials from Vadakkankulam to Valliyoor and when the vehicle was proceeding on the Tirunelveli-Nagercoil main road at Pilakottaiparai near Siva Workshop, the driver of the TATA ACE drove it in a rash and negligent manner and dashed against the Lorry TN-37-AM-1590, which was parked on the side of the road. Due to the impact, the deceased Rajagopal died on the spot and the claimant namely Babu sustained multiple injuries all over his body. The legal heirs of the deceased Rajagopal filed a claim petition in MCOP No.152 of 2010 seeking compensation of Rs.10,00,000/- on the ground that the offending vehicle caused the accident, whereas the injured claimant Babu filed a claim petition in MCOP No.24 of 2011 seeking compensation of Rs.7,00,000/- on the ground that the offending vehicle caused the accident .

3. The claims were resisted by the appellant Insurance Company contending that the claims made by the claimants were excessive and



they have also dispute the manner of accident and their liability to pay the compensation.

4. Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 16 documents. On the side of the Appellant Insurance Company, 2 witnesses were examined and 2 documents were marked.

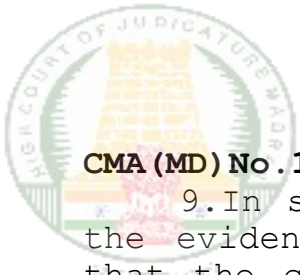
5. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.3,39,000/- in respect of MCOP No.152 of 2010 and Rs.3,20,900/- in respect of MCOP No.24 of 2011 together with interest @ 7.5% p.a., by directing the appellant Insurance Company first to satisfy the award amount and thereafter, recover from the owner of the offending vehicle. Challenging the said common award, these appeals have been filed.

6. Heard both sides and perused the materials available on record.

7. The learned counsel appearing for the appellant Insurance Company has mainly contended that the Insurance Company had proved that the risk in respect of any person carried in the vehicle is not covered under the policy of insurance and admitted, four persons were travelling in the vehicle and that the vehicle was not carrying any goods at the time of accident and since, the risk of such occupant is not required to be covered by the Insurance Company, the driver of the offending vehicle did not have any valid licence at all on the date of the accident and that the tribunal having accepted the above facts has wrongly fastened the liability on the Insurance Company. It is further submitted that the common award of the tribunal is on the higher side.

CMA (MD) No.1037 of 2013:-

8. It is not in dispute that the deceased Rajagopal was doing Centering Work. Since no reliable document has been filed on the side of the claimants to prove the income of the deceased, the tribunal has fixed the monthly income of the deceased at Rs.4,500/-. Since the deceased was a bachelor at the time of accident, the age of his mother is taken to calculating the multiplier as per the Apex Court judgment in the case of **Sarala Verma** and after deducting 1/3rd towards personal and living expenses, the tribunal has awarded Rs.3,24,000/- under the head of future income loss. Further, the tribunal has awarded Rs.10,000/- towards love and affection and Rs.5,000/- towards funeral expenses. In total, the tribunal has rightly awarded Rs.3,39,000/- to the claimants along with interest @ 7.5% p.a and directed the appellant Insurance Company to pay the award amount first and then recover from the owner of the offending vehicle. In my considered view, the quantum awarded by the Tribunal is fair and reasonable and the same can be confirmed.

**CMA (MD) No.1038 of 2013:-**

9. Insofar as the claimant in MCOP No.24 of 2011 is concerned, the evidence of PW3 and Ex.P15 Disability Certificate would show that the claimant had suffered 62.1% partial permanent disability. Based on the evidence, the Tribunal has awarded Rs.93,000/- towards partial permanent disability by awarding Rs.1,500/- per percentage and also awarded Rs.30,000/- for pain and suffering; Rs.15,000/- towards partial loss of income; Rs.1,67,846/- towards medical attendants and Rs.15,000/- towards mental shock and loss of mental peace. In total, the tribunal has awarded Rs.3,20,900/- together with interest @ 7.5% pa, by directing the appellant Insurance Company to pay the amount first and then, recover from the owner of the offending vehicle. In my considered view, the quantum awarded by the Tribunal is fair and reasonable and the same can be confirmed.

10. In this case, RW2 is the official of the appellant Insurance Company. He deposed that for the offending vehicle, IMT 37A endorsement has been stated in the policy (Ex.R2). He further deposed that out of two persons, one is the word 'collie' has been mentioned in the plural as 'coolies' in the policy (Ex.R2), for which premium of Rs.25/- has been collected as per IMT 39. The Tribunal accepting the evidence of RW1 and Ex.R2 held that the deceased and the injured claimant were travelling in the vehicle as 3rd parties and rightly directed appellant Insurance Company to pay their compensation at the first instance and thereafter, recover the same from the owner of the offending vehicle.

11. It is settled law that though the Insurance Company established violation of the policy condition and in respect of the claim made by the third parties, the Insurance Company has to first satisfy the award and then recover the same from the owner of the vehicle. In the case on hand, the Tribunal, after considering the facts and circumstances of the case, has rightly directed the appellant Insurance Company to pay the award amount first and then recover the same from the owner of the vehicle.

12. In such view of the matter, this court does not find any illegality or infirmity in the common award passed by the Tribunal. In fine, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar (CS)



To,

1. The Motor Accident Claims Tribunal/
Sub Court, Valliyoor,
Tirunelveli.

2. The Record Keeper, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) Nos.1037 and 1038 of 2013
25.03.2021

KMK (CO)
KB (07.06.2021) 5P 4C