



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.01.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.502 & 503 of 2010

and

M.P(MD)Nos.1 and 1 of 2010

The Branch Manager,
The New India Assurance Company Limited,
Dharapuram. .. Appellant/2nd Respondent in both appeals

vs.

1.Bagyam	...1 st Respondent/ Petitioner in CMA(MD)No.502/2010
1.K.Gopalakrishnan	...1 st Respondent/ Petitioner in CMA(MD)No.503/2010
2.C.Karuppusami	...2 nd Respondent/ 1 st Respondent in both appeals

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988 against the common judgment and decree made in MCOP Nos.66 and 67 of 2005 dated 18.02.2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Palani.

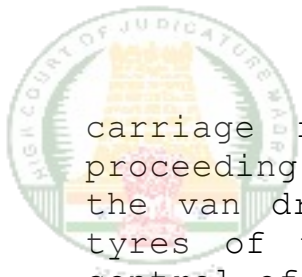
In both the appeals:-

For Appellant : Mr.J.S.Murali
For Respondents : Mr.N.Durairaj (for R1)
No appearance for R2

COMMON JUDGMENT

These appeals have been preferred against the common judgement passed by the Motor Accident Claims Tribunal (Sub-Court), Palani, in MCOP Nos.66 and 67 of 2005.

2.The first respondent in both the appeals were claimants in the above claim petitions. According to them, they are fruits vendors and on 02.07.2004, they travelled in a van bearing registration No.TN-33-C-3499 along with fruits loaded in the goods



carriage from Dharapuram to Tiruppur. When the vehicle was proceeding near N.Kanchipuram Cross north turning, the driver of the van drove it in a rash and negligent manner and one of the tyres of the vehicle also got bursted and the driver lost the control of the vehicle and it capsized. In the accident, both the claimants sustained injuries while the cleaner of the van died. They sought compensation of Rs.1,50,000/- and Rs.1,00,000/- respectively and the Tribunal has awarded Rs.1,10,700/- and Rs.37,000/- respectively with interest at 7.5% per annum. Aggrieved over the common Judgment and award, these appeals have been filed by the Insurance Company.

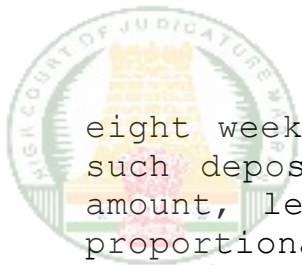
3.The case of the appellant/Insurance Company before the Tribunal was that the driver of the van was not having valid effective driving licence at the time of accident and the claimants were gratuitous passengers in a goods carriage and hence, no liability can be fastened against the appellant.

4.The Tribunal having found that the claimant in MCOP No.66 of 2005 suffered 45% permanent disability and there was shortage of 2 c.m of his left leg, awarded compensation of Rs.1,10,700/-. In MCOP No.67 of 2005, the claimant sustained 22% permanent disability and the Tribunal awarded compensation of Rs.37,000/- and in both the case, the Tribunal has awarded Rs.1000/- per percentage disability. The quantum awarded by the Tribunal is not seriously disputed by the appellant in these appeals. But their main contention is that the claimants travelled as gratuitous passengers and hence, no liability can be made against the insurer.

5.It is appropriate to note here that the legal heirs of the deceased claimant filed MCOP No.158 of 2004 seeking compensation and the Tribunal has awarded Rs.4,28,000/- making the insurance company liable to pay amount. The defence taken by the appellant was repelled by this Court in the appeal in CMA(MD)No.1261 of 2010 preferred against the award passed in MCOP No.158 of 2004 and a direction was issued to the appellant to pay the award amount and recover from the owner of the vehicle.

6.Following the order of this Court referred above, the contention of the appellant that they are not liable to pay compensation is rejected, however, there shall be a direction to the appellant to satisfy the award amount first and later recover the same from the insured.

7.Accordingly, both the Civil Miscellaneous Appeals are disposed of. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, already deposited, if any, within a period of



eight weeks from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

skn

To

1.The Sub Judge, Motor Accident Claims Tribunal,
Palani.

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

+2 CC to M/s.J.S.MURALI, Advocate (SR-739 & 740[F] dated
11/01/2021)

COMMON JUDGMENT MADE IN
C.M.A(MD)No.502 & 503 of 2010
and
M.P(MD)Nos.1 and 1 of 2010
08.01.2021

kmv (CO)

TR(16.02.2021) 3P 6C