



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 18.01.2021**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM**

**C.M.A(MD) No.629 of 2010**

**and**

**M.P. (MD) No.1 of 2010**

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The Branch Manager,  
The New India Assurance Co., Ltd.,  
147, Salai Street, High Sports Buildings,  
Ramanthapuram. .. Appellant/Respondent - 2

vs.

1.P.Selvam .. Respondent-1/Petitioner

2.L.Muniyandi .. Respondent-2/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment dated 27.11.2009 made in M.C.O.P.No.160 of 2006, on the file of the Motor Accident Claims Tribunal (Sub-Court), Srivilliputhur.

For Appellant : Mr.B.Vijay Karthikeyan  
For R1 : Mr.R.Karunanithi  
For R2 : No appearance

### **J U D G M E N T**

This appeal is directed against the judgment and award, dated 27.11.2009, passed by the Motor Accident Claims Tribunal (Sub-Court), Srivilliputhur in M.C.O.P.No.160 of 2006.

2. The first respondent herein is the claimant and this is a case of injury. According to the first respondent, on 24.08.1995 at 10.45 p.m., he along with 9 persons travelled in a mini Van bearing Registration No.TN-57-1059 owned by the second respondent herein and insured with the appellant Insurance Company. It is his case that the vehicle was driven by its driver in a rash and negligent manner and it was capsized. In the impact, 8 persons sustained injury and one Sundara Mahalingam died. Though he sought for compensation of Rs.50,000/- for the injuries sustained by him in the accident, the Tribunal has awarded a sum of Rs.15,000/- as compensation along with interest at the rate of 7.5 p.a.,

3. Mr.B.Vijay Karthikeyan, learned counsel for the appellant mainly contended that against the award passed in the case of Sundara Mahalingam, the appellant preferred an appeal before this Court in C.M.A(MD)No.761 of 2003 and this Court, having found that the deceased was a gratuitous passenger in a goods vehicle,



exonerated the insurance company. Though the judgment was produced before the Tribunal, the Tribunal issued direction to the appellant to pay the award amount and later recover from the owner of the vehicle.

4. Per contra, Mr.R.Karunanidhi, learned counsel appearing for the first respondent would state that admittedly, the appellant has satisfied the award passed in the case of 8 claimants and hence, the principles of *res-judicata* will apply to dispute the liability in the case of first respondent. It is also submitted that the Tribunal, in paragraph-10 of the judgment, considering this aspect and passed the order.

5. In the matter on hand, it is an admitted fact that on the date of accident, i.e., on 24.08.1995 about 9 persons were travelled in a mini van. Out of 9 persons, 8 persons sustained injuries and one died in the accident. As rightly pointed out by the learned counsel for the first respondent that the appellant/Insurance Company has paid the entire compensation in the case of 8 injured persons and disputed only in the case of first respondent herein.

6. Considering the quantum of compensation awarded in the case of injury and the contact of the appellant, this Court is not inclined to interfere with the findings of the Tribunal directing the appellant to pay the award amount and recover from the owner of the vehicle.

7. For the above said reasons, this Civil Miscellaneous Appeal fails and the same is dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am  
To

1. The Subordinate Judge,  
Motor Accident Claims Tribunal,

<https://hcservices.ecourts.gov.in/hcservices/>



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

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+1 CC to Mr.R.KARUNANIDHI, Advocate ( SR-1478[F] dated 20/01/2021 )

**JUDGMENT MADE IN**  
**C.M.A(MD) No.629 of 2010**  
**18.01.2021**

VB (11.02.2021) 3P 5C