

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.02.2021
Date of Judgment	08.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)Nos19 and 20 of 2013andMP(MD)Nos.1 and 1 of 2013**(1)CMA(MD)No.19 of 2013:-**

The Branch Manager,
Royal Sundaram Alliance Insurance Company Limited,
176-D-E, TVS Sons Ltd.,
Trivandrum Road,
Tirunelveli-627 003.

: Appellant/2nd Respondent

Vs.

1.Selvakumar (Died) : R1/Petitioner
2.Jenkinsujin
3.Jeyaparvathi

4.The Oriental Insurance Company Limited,
Shoba T.S.M Complex,
R.S Road, Opp. Town Railway Station,
Palacaud, Kerala,
Rep. by its Branch Manager : R2 to R4/Respondents 1,3 & 4

5.Marianesam : 5th Respondent/LR of the
deceased claimant)
(R5 brought on record as per the order
of this court, dated 17.03.2016 made
in CMP(MD)Nos.1165 to 1167 of 2016.
in CMA(MD)No.19 of 2013)

PRAYER in CMA(MD)No.19 of 2013:- 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
(Chief Judicial Magistrate), Tirunelveli, in MCOP No.129 of 2011,
dated 31.08.2012.

(2)CMA(MD)No.20 of 2013:-

The Branch Manager,
Royal Sundaram Alliance Insurance Company Limited,
176-D-E, TVS Sons Ltd.,
Trivandrum Road,
Tirunelveli-627 003.

: Appellant/2nd

Respondent



Vs.

: R1/Petitioner

1. Johnraj
2. Jenkinsujin
3. Jeyaparvathi

4. The Oriental Insurance Company Limited,
Shoba T.S.M Complex,
R.S Road, Opp. Town Railway Station,
Palacaud, Kerala,
Rep. by its Branch Manager

: R2 to R4/Respondents 1,3 & 4

PRAYER in CMA(MD)No.20 of 2013:- 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 (Chief Judicial Magistrate), Tirunelveli, in MCOP No.133 of 2011, dated 31.08.2012.

For Appellant in both CMAs : Mr.S.Srinivasa Raghavan

For 1st Respondent
in CMA(MD)No.19 of 2013 : Died

For 1st Respondent in
CMA(MD)No.20 of 2013 : Mr.V.Sasikumar

For R2, R3 and R5 in
in CMA(MD)No.19 of 2013 : No appearance

For R2 and R3 in CMA(MD)
No.20 of 2013 : No appearance

For 4th Respondent in both
cases : Mr.K.Bhaskaran

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed challenging the common award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tirunelveli, in MCOP Nos.129 and 133 of 2011, dated 31.08.2012.

2.The short facts of the case is that on 29.04.2011 at 5.30 am, when Selvakumar the claimant in MCOP No.129 of 2011 was travelling as a load man, while one Johnson the claimant in MCOP No.133 of 2011 was a Cleaner in the Mini Lorry TN-75-A-4284 on the Tirunelveli-Nagercoil Highways, Kavalkinaru near S.A.Raja Dental College, the driver of the Mini Lorry drove it in a rash and negligent manner and dashed against the parked Lorry TN-69-AA-6301. In the accident, both the Load man and the Cleaner sustained injuries. Both the claimants filed a separate claim petition, seeking compensation of Rs.8,00,000/- in respect of MCOP No.133 of 2011 and Rs.15,00,000/- in respect of MCOP No.129 of 2011 for the injuries sustained by them in the alleged accident.



3.The claim petitions were contested by the Royal Sundaram Insurance Company and the Oriental Insurance Company, disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimant(s), 3 witnesses were examined and marked 18 documents. On the side of the Insurance Companies, 1 witness was examined and 1 document was 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.10,93,600/- in respect of MCOP No.129 of 2011 and Rs.3,06,143/- in respect of MCOP No.133 of 2011 together with interest @ 7.5% p.a, directing the appellant Insurance Company to pay the compensation to the claimants and dismissed the claim petition as against the respondents 3 and 4 herein. Aggrieved over the common award of the tribunal, the appellant Insurance Company is before this court.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The main contention of the appellant/2nd respondent Insurance Company is that no document was filed on the side of the claimants to prove that at the time of accident, they travelled as load man and Cleaner and they travelled only as unauthorized passengers and hence, the Insurance Company is not liable to pay the compensation.

8.On the other hand, the learned counsel appearing for the 1st respondent/claimants, it is argued that at the time of accident, they travelled only as load men and as per the policy, additional premium was paid for two employees of the owner of the vehicle and they travelled only as load men and cleaner in the offending vehicle and hence, the Insurance Company is liable to pay the compensation. For that, the learned counsel appearing for the claimant submitted the following rulings viz., (1)2014(1)TN MAC 714 (United India Insurance Company Limited Vs. Selvi and another); (2)2014(1) TN MAC 797 (New India Assurance Company Limited Vs. Jayarani and others) and (3)2019(2)TN MAC 271 (Ravi Sundar Vs. C.Ravi).

9.In this case, in respect of the accident, the complaint was given by the driver of the parked lorry. PW1 stated during his evidence that he was working as Cleaner. PW2 stated during his evidence that he was working as load man in the offending vehicle. The competent person to say that the claimants are not their works, is the owner of the offending vehicle. In this case, the owner of the offending vehicle did not appear and contest the case. PW1 and PW2 during their evidence stated that the 1st respondent/owner of the offending vehicle had only one vehicle. The driver of the offending vehicle was not examined on the side of the respondents. In motor

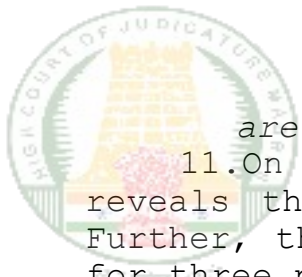


accident cases, it is not necessary to prove the case beyond reasonable doubt. In this case, on perusal of Ex.R1 (Policy), there was coverage of three persons including the driver.

10. On perusal of the decision reported in **2014(1) TN MAC 797 (New India Assurance Company Limited Vs. Jayarani)**, it has been held in para 12 as follows:-

"12. In the present case, the Policy covers two coolies, who were travelling to unload the blue metal. There is no prohibition in the policy that only the persons must travel. The conditions only state that the policy would cover the number of persons not exceeding seven for whom additional premium is paid. It is also not the case of the Appellant that the accident occurred because more number of persons travelled than that was permitted. On the contrary, the entire case of the appellants has been that the accident occurred due to the Bus, which came from the opposite direction. The Insurance Policy, in this case, also covers any claim under the Workmen's Compensation Act. RW1, in his cross examination, has accepted that the claimants are Coolies. Therefore, as held by this Court in this Judgment reported in Divisional Manager, New India Assurance Co. Ltd., V Navaneedhammal, 2013(1) TN MAC 268, when a Coolie, employed for loading and unloading of goods, travels along with the goods, the Insurance Company would certainly be liable. The accident has certainly occurred during the course of employment. The only material thing in those cases would be that the Tribunal should apply the principles for awarding Compensation under the Motor Vehicles Act and not the principles under the Workmen's Compensation Act when the claim is under the Motor Vehicles Act. The Tribunal has not resorted to the provisions of Workmen's Compensation Act. Hence, I find no irregularities in the Award of the Tribunal in both the Claim Petitions.

13. Before parting with, this Court is of the opinion that in the Judgments reported in Divisional Manager, New India Assurance Co. Ltd., Vs. Navaneedhammal, 2013(1) TN MAC 268; and The Divisional Manager, New India Assurance Co. Ltd., Vs. Sambath, 2013(2) TN MAC 632, cites supra, this Court has clearly laid down the principles governing the issue. The facts of those cases are similar to the cases on hand and the Appellant is one and same. Therefore, on settled issues, the Appellant must refrain from filing unnecessary Appeals, that too when the Compensation involved is paltry. With the above observations, the Appeals



are dismissed. No costs.

11. On careful perusal of the evidence of PW1 and PW2, it reveals that they travelled as workers in the offending vehicle. Further, the owner of the offending vehicle paid additional premium for three persons including the driver. Further, RW1 admitted during his cross examination that only two claim petitions were filed. Hence, it is held that coverage is applicable to 2 persons engaged by the 1st respondent/owner of the offending vehicle for loading and unloading. Hence, the trial court correctly came to the conclusion that the claimants are workers under the 1st respondent/owner of the offending vehicle and appellant Insurance Company is liable to pay the compensation.

12. In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Tirunelveli.

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

+2 CC to M/s.V.SASI KUMAR, Advocate (SR-18998,18999[F])

+2 CC to M/s.K.BHASKARAN, Advocate (SR-19068[F],19069)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-7459[F])

CMA (MD) Nos.19 and 20 of 2013

08.06.2021

KK(29.06.2021) 5P 9C