



C.M.A.Nos.3180 to 3182 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 04.11.2022

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.Nos.3180 to 3182 of 2005

Branch Manager,
United Insurance Co. Ltd.,
Karur.

...Appellant in all CMAs

Vs.

1.Ponammal

2.Muthaiyee

3.Seviappan

4.Minor. Ganesan

Minor Rep. by Next Friend & Mother Muthaiyee

5.K.Chandrasekaran

6.P.Natarajan

... Respondents in C.M.A.No.3180
of 2005

[R6 impleaded vide order of Court dated 15.03.2007
made in C.M.P.Nos.9844 to 9846 of 2006]

1.Veerappan

2.K.Chandrasekaran

3.P.Natarajan

... Respondents in C.M.A.Nos.3181
& 3182 of 2005

[R3 impleaded vide order of Court dated 15.03.2007
made in C.M.P.Nos.9844 to 9846 of 2006]



C.M.A.Nos.3180 to 3182 of 2005

Prayer in all CMAs: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 21.04.2005 made in M.C.O.P.Nos.76, 78 & 77 of 2001 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Sankari.

For Appellant : M/s.N.Rosinaidu
(In all cases)

In C.M.A.No.3180 of 2005

For R1 : Died
For R2 and R3 : Mr.N.Manokaran
For R4 : Minor rep by R2
For R5 : Mr.P.Valliappan
For R6 : Served-No Appearance

In C.M.A.Nos.3181 & 3182 of 2005

For R1 : Mr.N.Manokaran
For R2 : Mr.P.Valliappan
For R3 : Served-No appearance

COMMON JUDGMENT

The second respondent-Insurance Company has challenged the Award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode in M.C.O.P.Nos.76, 77 and 78 of 2001 on the ground that the Tribunal has erred in fastening the liability on them to compensate the petitioners, though the policy was an act policy and the vehicle was used for



C.M.A.Nos.3180 to 3182 of 2005

hire on the date of the accident.

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2. The brief facts are as follows and the ranking of the parties herein are as per their rank before the Tribunal.

M.C.O.P.No.76 of 2001:

The petitioners, the legal representatives of the deceased Kuppusamy being his mother, wife and children, had filed the above claim petition seeking compensation of a sum of Rs.5,00,000/- for the death of the said Kuppusamy in a road accident on 15.09.2000. It is their case that the said Kuppusamy was carrying on business in manufacturing and selling bricks and earning a monthly income of Rs.16,000/-. On 15.09.2000, the said Kuppusamy was travelling from Solasiramani to Erode in an ambassador car, bearing Registration No.TCW 3676 along with his brothers, Veerappan and Thangavel at about 9.p.m. The driver of the car was driving the vehicle in a rash and negligent manner, owing to which, the driver had rammed against the stationary lorry near Pudhupuliampatty, as a result of which, the said Kuppusamy sustained severe head injuries and injuries to other parts of his body and died on the spot.



C.M.A.Nos.3180 to 3182 of 2005

M.C.O.P.No.77 of 2001:

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This petition is filed by the other occupant of the car and he is the person who had given the first information report. He would contend that he working in the brick klin along with his brother, Kuppusamy, who died and he had claimed a compensation of a sum of Rs.2,05,000/-.

M.C.O.P.No.78 of 2001:

This petition was filed by the third occupant of the car bearing Registration No.TCW 3676. He would contend that he was also working along with his brother late Kuppusamy in the brick klin and was earning a sum of Rs.2,00,000/- (Rs.2,000/- per month)

3. The Insurance Company had filed a separate counter in each of the petitions denying the allegations contained in the respective claim petitions. The Insurance Company had also taken a defence that on 15.09.2000, the petitioners along with his deceased brother Kuppusamy were travelling in the car belonging to the first respondent, which they had hired. The Insurance Company also took a stand that the policy in question was an act policy, which did not cover the risk of the occupants of the car, as they



C.M.A.Nos.3180 to 3182 of 2005

are unauthorised passengers and therefore, they were not liable to pay the compensation. Further, the Car TCW 3676 was a private car and not a tourist car. The second respondent had contended that even in the F.I.R, the complainant, Veerappan, who is the petitioner in M.C.O.P.No.77 of 2001 had stated that they were travelling to the hospital at Erode and had hired the Car, TCW 3676. Therefore, the second respondent apart from denying the liability to pay the compensation had also denied the allegations in the claim petition and sought to have the claim petition dismissed against the second respondent.

4. The Tribunal below despite this plea being taken by the Insurance Company has proceeded to award compensation by holding that the Insurance Company is liable to compensate the petitioners. The Tribunal had awarded compensation to the petitioners in these 3 claim petitions.

5. The Award has been challenged only on the ground that the Insurance Company ought to have been exonerated, since the policy in question is only act policy, which is evident from a perusal of Ex.R1. A perusal of Ex.R1 would indicate the same. The Tribunal has not at all



C.M.A.Nos.3180 to 3182 of 2005

considered the defence.

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6. The learned counsel for the appellant would point out that the offending vehicle is a private car and on the very statement of the petitioner in C.M.A.No.77 of 2001, the said car was taken on hire.

7. Per contra, learned counsel appearing for respondents 2 and 3 in C.M.A.No.3180 of 2005 and respondent-1 would submit that the vehicle was that of the friend of the deceased Kuppusamy. and therefore, it cannot be considered that the petitioners had hired the offending vehicle. He would rely upon the judgment of this Court reported in **2010 (1) MWN (Civil) 501 [United India Insurance Company Limited, Dharmapuri Vs. N.Krishnamurthy and 2 others]** in support of his arguments that the insurance coverage was a third party insurance coverage. The policy of insurance is a private agreement only within the knowledge of the Insurance Company and the insured. The third party claimant would not have access to this policy and the burden heavily lies on the Insurance Company to prove the conditions of policy as per the law of evidence. He would argue that since this is a breach of policy conditions, the Tribunal has rightly passed the



C.M.A.Nos.3180 to 3182 of 2005

Award. He would also rely upon the judgment of the Hon'ble Supreme Court

reported in *(2008) 12 SCC 657/ United India Insurance Company Vs.*

Suresh K.K. and another) to support his arguments on equity by relying upon the paragraphs 11 and 12 therein.

8. However, in the case on hand, a perusal of Ex.R1 would clearly show that it is an act only policy and does not cover hire or reward. Taking into account the statement made in Ex.P1-F.I.R, where the petitioner in M.C.O.P.No.77 of 2001 has clearly stated that the vehicle in question had been hired by his brothers to take one of them to Doctor at Erode. The contention of the petitioners that the deceased and his brothers were travelling in the car of their friend cannot be countenanced. Therefore, the Award of the Tribunal insofar as it fastens liability on the Insurance Company to pay the compensation is erroneous and the same is set aside.

9. The first respondent had taken a plea that the vehicle had been sold to the 6th respondent herein and it is only the 6th respondent, who shall be held liable to pay the compensation. The 6th respondent though served has not entered appearance in the above proceedings.



C.M.A.Nos.3180 to 3182 of 2005

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10. Be that as it may, in the records of Regional Transport Office, the first respondent herein continues to be shown as the owner of the vehicle. Therefore, the compensation now awarded by the Tribunal has to be paid by the 5th respondent in C.M.A.No.3180 of 2009 and the 2nd respondent in C.M.A.Nos.3181 and 3182 of 2009/first respondent to the petitioners.

11. Accordingly, these civil miscellaneous appeals are therefore allowed exonerating the appellant in all these appeals with a direction that the compensation awarded by the Tribunal will be paid by the 5th respondent in C.M.A.No.3180 of 2009 and the 2nd respondent in C.M.A.Nos.3181 and 3182 of 2009/first respondent to the petitioners. In other respects, the Award of the Tribunal is hereby confirmed. No costs.

04.11.2022

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To

1. The Motor Accidents Claims Tribunal, Sub Judge,

8/10



C.M.A.Nos.3180 to 3182 of 2005

Sankari.

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2.The Section Officer,
V.R.Section, High Court, Madras.



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C.M.A.Nos.3180 to 3182 of 2005

P.T.ASHA, J.,

srn

C.M.A.Nos.3180 to 3182 of 2005

04.11.2022