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C.M.A.Nos.2324, 2325 of

2016

and 55 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.Nos.2324, 2325 of 2016

and 55 of 2017

and C.M.P.Nos.16325, 16326 of 2016, 538 and
18063 of 2017

C.M.A.No.2324 of 2016 :

National Insurance Company Ltd.,
751, Anna Salai, Chennai – 2

... Appellant

Vs

1. Kaliasammal
2. Ravi
3. Vijaya
4. Vasanthi
5. M.Ramesh Babu

... Respondents

C.M.A.No.2325 of 2016 :

National Insurance Company Ltd.,
751, Anna Salai, Chennai – 2

... Appellant

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C.M.A.Nos.2324, 2325 of
2016
and 55 of 2017

Vs

1. P. Maheswari
2. P.Sridhar
(Minor rep by mother and next friend guardian
P.Maheswari)
3. K.Subbiah Nadar
4. M. Ramesh Babu

...Respondents

C.M.A.No.55 of 2017

National Insurance Company Ltd.,
751, Anna Salai, Chennai – 2

... Appellant

-vs-

1. P.Ponraj
2. M.Ramesh Babu

...Respondents

Prayer in C.M.A.No.2324 of 2016 : : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 04.01.2014 made in O.P.No.1841 of 2006 on the file of the Motor Accident Claims Tribunal (In the VI Court of Small Causes), Chennai.

Prayer in C.M.A.No.2325 of 2016 : : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 04.01.2014 made in O.P.No.1850 of 2006 on the file of the



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Motor Accident Claims Tribunal (In the VI Court of Small Causes),
Chennai.

Prayer in C.M.A.No.55 of 2017 : : Civil Miscellaneous Appeal filed under
Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree
dated 19.02.2016 made in M.C.O.P.No.2433 of 2006 on the file of the
Motor Accident Claims Tribunal (In the VI Court of Small Causes),
Chennai.

For Appellant : Mr.D.Bhaskaran
(in all CMAs)

For Respondents 1 to 4
(in CMA.No.2324/2016)

For Respondents 1 to 3
(in CMA.No.2325/2016)

For Respondent-1
(in CMA.No.55/2017) : Mr.J.Ramkumar

For Respondent-5
(in C.M.A.No.2324 of 2016) : Served – No Appearance

For Respondent-4
(in C.M.A.No.2325 of 2016) : Served – No Appearance

For Respondent-2
(in C.M.A.No.55 of 2017) : Not ready in notice – Reg R2



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COMMON JUDGMENT

Since three claim petitions arise out of a single accident, a common judgment is being pronounced. The parties are referred to in the same ranking as before the Tribunal.

2. The brief facts are as follows:-

(i) The petitioners in M.C.O.P.No.1841 of 2006 and M.C.O.P.No.1850 of 2006 are the legal representatives of the deceased passengers, who have travelled in the first respondent's TATA ACE. The claimant in M.C.O.P.No.2433 of 2005 is the injured, who was also travelling in the very same vehicle.

(ii) One T.Arumugam (whose legal heirs had filed



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M.C.O.P.No.1841 of 2006), Pandian @ Padmarajan (whose legal heirs had filed M.C.O.P.No.1850 of 2006), and P.Ponraj, the petitioner in M.C.O.P.No.2433 of 2006 and others were travelling in the TATA ACE belonging to the first respondent and insured with the second respondent-Insurance Company on 19.08.2005. On the said date, all of them claimed to be carrying vegetables from the Koyambedu Market, at about 8.30 pm, when the vehicle was travelling on the Poonamallee High Road, since the driver of the vehicle was driving it in a rash and negligent manner had dashed against the median, as a result of which, the van has capsized and caused injuries to the persons travelling in the said vehicle and also caused the death of the said Arumugam and Pandian @ Padmarajan. The petitioners in M.C.O.P.No.1841 of 2006 had claimed a sum of Rs.8,00,000/- as compensation. The claimants in M.C.O.P.No.1850 of 2006 had claimed a compensation of Rs.10,00,000/- and the claimant in M.C.O.P.No.2433 of 2006 had claimant a compensation of a sum of Rs.1,00,000/-.



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(iii) The contention of the petitioners was that the accident had occurred only on account of the rash and negligent driving by the driver of the first respondent's vehicle.

3. The first respondent had remained *ex-parte* and it was the second respondent-Insurance Company which had contested the claim petitions. They had taken out a defence that the insurance company cannot be mulcted with the liability, since the claimants were all gratuitous passengers in the goods vehicle. They had also stated that the driver of the first respondent's vehicle drove the same safely and not rashly and negligently as contended by the petitioners.

4. Ultimately, the Tribunal has held the negligence on the part of the driver of the first respondent's vehicle and in the case of the claimants in M.C.O.P.No.1841 of 2006, a compensation of a sum of Rs.7,55,000/- with interest @ 7.5% per annum was awarded and in M.CO.P.No.1850 of 2006, a compensation of Rs.11,00,000/- was awarded with interest @ 7.5% per

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annum. The claimant in M.C.O.P.No.2433 of 2000 was awarded a sum of Rs.60,000/-. All these Awards were challenged by the Insurance Company on the ground that the persons travelled in the TATA ACE were gratuitous passengers in a goods vehicle is violative not only on the terms of the policy but also the provisions of the Motor Vehicles Act.

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

6. Admittedly, the vehicle in which the deceased were travelling has a seating capacity of 1+2, i.e., two persons including the driver. Although the Insurance Company has contended that over 11 persons had travelled in the vehicle, they have not been able to prove the same and the Tribunal has rejected the said contention. Further, P.W3 who is an eye witness stated that both the deceased were sitting in the cabin along with the driver. Further, they had been seated in the vehicle as owners of the goods

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which have been carried in the vehicle. Therefore, the contention of the Insurance Company that the deceased Arumugam and Pandian @ Padmarajan. were gratuitous passengers may not be correct, in the light of the evidence of P.W3 and also taking into account the fact that the vehicle has a seating capacity of 1 + 2. However, with reference to the claimant in M.CO.P.No.2433 of 2005, an inference has to necessarily be drawn that he was travelling as a gratuitous passenger. In the light of the above, the challenge to the Awards in M.C.O.P.No.1841 of 2006 and M.C.O.P.No.1850 of 2006 has to necessarily be rejected. **Consequently, C.M.A.Nos.2324 and 2325 of 2016 stand dismissed.** The Insurance Company in both the cases shall deposit the Award amount and recover the same from the first respondent being the owner of the vehicle, since there is a violation of the policy conditions. In other respects, the Award of the Tribunal is hereby confirmed.

7. Insofar as **C.M.A.No.55 of 2017** is concerned, it is partly



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allowed, since the petitioner is a gratuitous passenger, the Insurance Company is exonerated from its liability. The first respondent-owner of the vehicle is made liable to compensate the petitioners. To that extent, the Award passed by the Tribunal in **M.C.O.P.No.2433 of 2006 is set aside.** No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2022

Index : Yes / No

Speaking order / Non-speaking order

srn

To:

1.The Motor Accident Claims Tribunal
(In the VI Court of Small Causes), Chennai.

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

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P.T.ASHA, J.,

srn

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