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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.10.2022**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.1898 of 2017 & 4357 of 2019
and
C.M.P.Nos.24828 of 2019 & 10139 of 2017

[CMA.No.1898 of 2017]

The Divisional Manager
M/s. National Insurance
Company Limited,
Divisional Office,
No.110, J.N.Street,
Puducherry - 605001.

... Appellant / 2nd Respondent

Vs.

1.Mr.Sundaramoorthy ... Respondent-1 / Petitioner -1

2.Mrs.S.Shanthi ... 2nd Respondent / Petitioner-2

3.Ms.S.S.Shanthi ... 3rd Respondent/ Petitioner-3

4.Minor. Jeevakala
(Rep. by father/Guardian/Next friend, 1st Petitioner, K.Sundaramoorthy)

... 4th Respondent/ Petitioner-4

5.Mr.S.V.RAghavan ... 5th Respondent/ Respondent-1

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[CMA.No.4357 of 2019]

The Divisional Manager
M/s. National Insurance
Company Limited,
Divisional Office,
No.110, J.N.Street,
Puducherry - 605001.

... Appellant / 2nd Respondent

Vs.

1.Mr.Sundaramoorthy ... Respondent-1 / Petitioner

2.Mr.S.V.RAghavan ... 2nd Respondent/ Respondent-1

PRAYER in CMA.No.1898 of 2017 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the decree and judgment dated 25.11.2016 passed in MCOP No.2252 of 2012 by the Hon'ble MACT I Additional Court of Judge at Cuddalore.

For Petitioner : M/s.J.Michael Visuvasam
For Respondents : M/s.Ramya V.Rao [R.1 to R.3]
: [R.4 -Minor rep. by R.1]
: No appearance [R.5]

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PRAYER in CMA.No.4357 of 2019 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the decree and judgment dated 25.11.2016 passed in MCOP No.2252 of 2012 by the Hon'ble MACT I Additional Court of Judge at Cuddalore.

For Petitioner : M/s.J.Michael Visuvasam
For Respondents : M/s.Ramya V.Rao [R.1]
: No appearance [R.2]

COMMON JUDGEMENT

The insurance company has filed the above appeals challenging the award passed by the Motor Accidents Claim Tribunal, I Additional District Judge, Cuddalore, in MCOP No.2252 of 2012 and 2289 of 2012.

2. MCOP No.2252 of 2012 is filed by the legal representatives of one Devika, the wife of the 1st petitioner and mother of petitioners 2 to 4 who had died in a road accident on 05.03.2011.

3. MCOP No.2289 of 2012 if filed by the 1st petitioner in MCOP No.2252 of 2012 claiming compensation for the injuries that he had sustained

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in the very same road accident. The facts in brief as narrated by the petitioners is herein below set out and the parties are referred to in the same ranking as before the Tribunal.

4. On 05.03.2011, the petitioner in MCOP No.2289 of 2012 along with his wife Devika were travelling as the owners of the goods (pots) from Thambaram to Panruty in the lorry belonging to the 1st respondent bearing Registration No.TN-04 J 8592. It is their case that the driver was driving the said vehicle in a rash and negligent manner and when he had applied a sudden brake the goods had fallen on the petitioner and his wife as a result of which the petitioner had sustained injuries and his wife had died on the spot. A compensation of a sum of Rs.10,00,000/- was claimed for the death of the said Devika and a sum of Rs.50,000/- was sought for by the petitioner in MCOP No.2289 of 2012 for the injuries sustained by him. It is their contention that the deceased Devika as well as the Sundaramoorthy, the petitioner in MCOP No.2289/2012 were Potters and they were carrying their goods in the respondent's lorry.

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5. The 1st respondent/ owner of the lorry remained ex parte in both the claim petitions and it was only the 2nd respondent/insurance company who had filed their counter in the two claim petitions. The main contention raised by the insurance company was that the deceased and the petitioner in MCOP No.2289 of 2012 had been traveling as unauthorized passengers and therefore, they cannot claim a compensation. They had put the 1st respondent to prove that the vehicle was covered by insurance and was having a valid registration certificate, fitness certificate and permit.

6. The 2nd respondent/insurance company would further submit that without prejudice to the above contentions it was the deceased Devika and Sundaramoorthy who had been negligent by sitting in the lorry without any precautions.

7. The Tribunal below on considering the evidence on record proceeded to hold that the accident had occurred only on account of the rash and negligent driving by the driver of the lorry. They had relied upon Ex.P.1, FIR. The Tribunal further observed that R.W.1, the witness on the side of the

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insurance company had not spoken about the rash and negligent driving but had only deposed about the unauthorized passenger. Thereafter, the Tribunal below had considered the evidence of R.W.1, regarding the deceased and the said Sundaramoorthy being unauthorized passengers in a goods vehicle. The Tribunal below relied upon the cross examination of R.W.1 and held that at the time of the accident the deceased as well as her husband Sundaramoorthy were travelling in the 1st respondent's vehicle and therefore since the vehicle was driven in a rash and negligent manner they had sustained injuries and death and therefore, the insurance company was liable to compensate the petitioners in both the OPs. The Tribunal had granted a sum of Rs.8,54,000/- in MCOP No.2252 of 2012 and Rs.25,000/- in the case of MCOP No.2289 of 2012. Aggrieved by the said award the insurance company is before this Court.

8. Mr. Michael Visuvasam, the learned counsel appearing on behalf of the insurance company would submit that a perusal of the FIR would show that it was based on the complaint given by the brother of the deceased Devika. In his complaint he has contended that on the said date his brother in law Sundaramoorthy and his wife Devika were travelling from Tambaram

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towards Madurai in the lorry bearing Registration No,TN.04 J8596. The vehicle was a Eicher Van. The vehicle was being driven in a rash and negligent manner and the driver had suddenly applied the brakes. In his complaint he has stated that his sister and brother in law were seated inside the goods carrier portion of the vehicle and the goods stored had fallen on them as a result of which they had sustained injuries. He has not stated that the goods being transported were the goods belonging to the aforesaid persons. However, there is absolutely no evidence to prove that goods were indeed being carried in the vehicle since there is no complaint about the loss or damage to goods.

9. He would submit that it is not the case of the petitioners that the deceased and her husband were travelling in the cabin. That apart, the application of brake by the driver cannot be treated as rash and negligent driving since while plying on the road the driver may come across several situations wherein he has to apply the brakes to the vehicle. He would further submit that once the petitioners have not been able to establish the fact that it was their goods that was carried in the lorry and that they were travelling as the owner of the goods, they can only be treated/termed as a gratuitous

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passengers. He would therefore seek to have the award passed by the tribunal below is set aside.

10. Per contra, M/s. Ramya V.Rao, learned counsel for the respondent would submit that even in the FIR, the brother of the deceased Devika had clearly submitted that his sister and brother in law were travelling as owners of the goods. Once it is established that they are the owners of the goods then they cannot be termed as unauthorized passengers and therefore, the award of the Tribunal is in order.

11. Heard both the counsel.

12. The petitioner in column No.23 have not narrated the manner in which the accident had taken place. In fact in column no.23 except for stating that they were traveling as the owners of the goods, the petitioners have not stated as to where they were seated. In the FIR given by the brother of the deceased and brother in law of Sundaramoorthy, he would clearly state that they were seated between the goods. Therefore, considering the fact that the vehicle is a goods carrier and they are travelling in the body of the Eicher van

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clearly shows that they are unauthorized passengers particularly when there is nothing to show that the petitioners were travelling along with the pots as its owners or that they were seated in the cabin along with the driver.

13. Therefore, the Tribunal below erred in ignoring the argument put forward by the insurance company. Further the claimants have not reported any loss or damage to the goods in fact, there is no complaint with reference to the goods. Therefore, the award passed by the Tribunal has to necessary be interfered with and is accordingly set aside and both the Civil Miscellaneous Appeals are allowed. No costs. Consequently, the connected Miscellaneous Petitions is closed, if any.

18.10.2022

Index : Yes/No
Internet: Yes/No
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To
1. The Motor Accident Claims Tribunal
I Additional Court of Judge at Cuddalore.

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

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P.T. ASHA, J,

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