BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.11.2022

Delivered On : 17.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.1339 to 1341 of 2010

C.M.A.(MD)No.1339 of 2010

National Insurance Company Limited,
Mamanjee Center,
S-7, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai. .. Appellant /2nd Respondent

Vs.

1.Nachadalingam
2.Annamalaithai ... Respondents 1&2 / Petitioners
3.Jeyaraj ... 3rd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 19.06.2006, made in M.A.C.O.P.No.32 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil.

For Appellant	: Mr.S.Srinivasa Raghavan
For Respondents	: No appearance

C.M.A.(MD)No.1340 of 2010

National Insurance Company Limited,
Mamanjee Center,
S-7, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai. ... Appellant /2nd Respondent

Vs.

1.Thalamuthu ... 1st Respondent / Petitioner
2.Jeyaraj ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 19.06.2006, made in M.A.C.O.P.No.100 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : No appearance

C.M.A.(MD)No.1341 of 2010

National Insurance Company Limited,
Mamanjee Center,
S-7, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai. .. Appellant /2nd Respondent

Vs.

1.Veeramani ... 1st Respondent / Petitioner
2.Jeyaraj ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 19.06.2006, made in M.A.C.O.P.No.36 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil.

For Appellant	:	Mr.S.Srinivasa Raghavan
For Respondents	:	No appearance

COMMON JUDGMENT

C.M.A(MD)No.1339 of 2010 has been filed against the award, dated 19.06.2006, made in M.A.C.O.P.No.32 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil. The appellant herein is the second respondent, the respondents 1 & 2 herein is the claimants and the third respondent herein is the first respondent in the original M.C.O.P. Petition.

2. C.M.A(MD)No.1340 of 2009 has been filed against the award, dated 19.06.2006, made in M.A.C.O.P.No.100 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

3. C.M.A(MD)No.1341 of 2009 has been filed against the award, dated 19.06.2006, made in M.A.C.O.P.No.36 of 2004, on the file of the Motor Accident Claims Tribunal – Sub Court, Sankarankoil. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

4. Since all the 3 claim petitions arise out of the same accident, the Tribunal has taken up all the 3 cases for joint trial and a common Judgment was pronounced by the Tribunal.

5. A Brief substance of the claim petitions, in M.C.O.P.Nos. 32, 36 and 100 of 2004 is as follows:

On 06.02.2004, the petitioner and others travelled in a load auto bearing Registration No.TN-76-Z-2802 as owners of vegetables, the first respondent drove the vehicle in a rash and negligent manner and the vehicle capsized. All the three persons sustained injuries, they were admitted in Sivagiri Government Hospital, at about 12.15 pm., Jeyaraman succumbed to the injuries. The vehicle was insured with the second respondent and the petitioners, who are the dependents of the deceased-Jeyaraman, in M.C.O.P.No.32 of 2004, claim a sum of Rs.5,00,000/- and the petitioner-injured in M.C.O.P.No.36 of 2004 claim a sum of Rs.5,00,000/- and the petitioner - injured in M.C.O.P.No.100 of 2004 claim Rs.2,00,000/- as compensation.

6. A brief substance of the counter filed by the second respondent in all the petitions in M.C.O.P.Nos. 32, 36 and 100 of 2004, is as follows:

The petitioners have to prove their injuries. The manner of accident is wrongly narrated in the petitions. The injured are all responsible for the accident. The vehicle is a goods carrier. There is no necessity for the petitioners to travel in that vehicle. The policy conditions are violated. The petitioners have to prove their age, income and profession. The first respondent was not having valid driving licence. The claim is excessive.

7. In the joint trial, 4 witnesses were examined and 12 documents were marked, on the side of the claimants. 2 witnesses were examined and 3 documents were marked, on the side of the respondents.

After considering both sides, the Tribunal awarded a sum of Rs.3,15,600/- as compensation in M.C.O.P.No.32 of 2004, Rs.1,08,500/- as compensation in M.C.O.P.No.36 of 2004 and Rs.64,080/- as compensation in M.C.O.P.No.100 of 2004 along with interest at the rate of 9% pa..

8. Against the order, the second respondent / appellant has filed the appeals on the following grounds:-

The Tribunal failed to consider that the insurance company cannot be held liable to pay compensation for passengers, who travelled in a goods carrier. There is no coverage for the passengers under the M.V. Act or under the policy of insurance. The deceased was an unauthorised passenger. The claimants failed to prove that goods were carried at the time of accident and hence, the claimants failed to prove that the injured travelled as the owner of the goods. Only the owner of the vehicle is liable to pay compensation and not the insurance company. Even an order of pay and recover is not applicable, for an unauthorised passengers in a goods carrier. The Tribunal failed to consider that the claimants failed to prove the income and profession of the injured. The Tribunal is wrong in fixing the monthly income at Rs.2,100/-. The Tribunal ought to have taken the age of the parents and not the age of the deceased for assessing the quantum. The multiplier for the age of parents ought to have been adopted. The rate of interest fixed by the Tribunal is excessive.

9. On the side of the appellant, it is stated that the deceased was an unauthorised passenger in a goods carrier. The evidence of the official from R.T.O office and the evidence of an official from the insurance company reveals that the seating capacity of the vehicle is for the driver plus one person. In this case, 5 persons travelled in the vehicle. 3 petitions were filed, there was no proof that the deceased and the injured claimants travelled as the owner of the goods. There was no appeal by the claimants or by the owner of the vehicle and the decision that at the time of accident, the deceased and the injured victims did not travel as owners of the goods is final. There is no coverage for an unauthorised passengers.

10. P.W.1 has deposed that it was the auto driver, who was rash and negligent, he has deposed that the other 3 persons travelled on top of the vegetable bags and they fell down on the road and sustained injuries. He has deposed that they were admitted in Sivagiri Government Hospital and the deceased-Jeyaraman died, due to the injuries sustained by him in the accident. P.W.2 and P.W.3 have deposed that the owner cum driver of

the auto was riding the vehicle, the deceased-Jeyaraman and Thalaimuthu and herself travelled on top of the vegetables. F.I.R was marked as Ex.P1. Charge sheet was marked as Ex.P3. M.V.I. report was marked as Ex.P4. Observation Mahazer was marked as Ex.P5. Rough Sketch was marked as Ex.P6.

11. R.W.1 has deposed that the vehicle was not a passenger vehicle. It was a goods carrier and the policy is valid only for the driver and one more person. On the side of the appellant, it is further stated that the auto driver was not having valid driving licence and that there was no goods in the auto at the time of accident. R.W.2- Motor vehicle inspector, grade-II, has deposed that there was insurance coverage only for one person and that the others,who travelled in the vehicle, were not entitled to claim compensation. R.W.1 and R.W.2 have further deposed that since the vehicle was overloaded with passengers, there is policy violations and the insurance company is not liable to pay compensation.

12. It is seen that F.I.R and charge sheet were lodged against the first respondent, who was the driver cum owner of the vehicle. It is true that the policy was inforce and it was valid at the time of accident.

13.It is seen that there are 3 claim petitions claiming compensation for the injuries sustained by the victims in the same accident. Admittedly, there is policy coverage only for a driver and one more person. The passengers travelling on top of the vegetables bags, are liable for contributory negligence. Hence, it is decided that the deceased and the injured are liable for 10% contributory negligence.

14.Since the policy is valid for driver and one more person, for the one other person the Insurance Company is liable to pay compensation. In the above circumstances, it is decided that the Insurance Company is liable to pay compensation in M.C.O.P.No.32 of 2004, that is, in C.M.A.(MD)No.1339 of 2010.

15. In CMA(MD)No.1340 and 1341 of 2010, it is decided that the insurance company is not liable to pay compensation. Those claimants are entitled to claim compensation only from the owner of the vehicle. The insurance company is exonerated from the liability.

In M.C.O.P.No.32 of 2004 (CMA(MD)No.1339 of 2010):

16. The Tribunal has fixed the monthly income as Rs.2,100/-, which is very low. Considering the period of accident, notional income is fixed as Rs.4,500/-, after deducting 50% (Rs.2,250/-) towards the own expenses of the deceased, the income is calculated as Rs.2,250/-. Considering the age of the deceased (25 years), multiplier 17 is applicable. Hence, the loss of income is calculated as Rs.4,59,000/- (Rs.2,250/- X 12 X 17). The Tribunal has awarded Rs.10,000/- towards funeral expenses, Rs.20,000/- towards loss of love and affection, which are all reasonable.

17. The total calculation is as follows:

Loss of income	:	Rs. 4,59,000/-
Funeral expenses	:	Rs. 10,000/-
Loss of love and affection	:	Rs. 20,000/-
Total compensation	:	Rs. 4,89,000/-

After deducting 10% (Rs.48,900/-) towards contributory negligence, the claimants are entitled to Rs.4,40,100/- as compensation, to be paid by the appellant – Insurance Company.

M.C.O.P.No.36 of 2004 (CMA(MD)No.1341 of 2010):

18. Doctor was examined as P.W.4. He has deposed that the claimant has sustained 40% disability. Disability certificate was marked as Ex.P9. X-rays were marked as Ex.P10. The Tribunal fixed the disability at 25%. **The Tribunal fixed the monthly income as Rs.2,100/-. For 25% Disability,** the Tribunal has awarded Rs.94,500/- (Rs.2,100/- X 25/100 X 12 X 15) towards the loss of income. The Tribunal has awarded Rs.5,000/- for pain and sufferings, Rs.5,000/- for extra nourishment, Rs.3,000/- for transport expenses, Rs.1,000/- for loss of articles and totally awarded Rs.1,08,500/- as compensation, which are all reasonable. Hence, it is decided that after deducting 10% (Rs.10,850/-) towards contributory negligence, the claimant is entitled to Rs.97,650/- (Rs.1,08,500 – Rs. 10,850/-) as compensation, to be paid by the owner of the vehicle.

In M.C.O.P.No.100 of 2004 (CMA(MD)No.1340 of 2010):

18. Wound certificate was marked as Ex.P8. Doctor was examined as P.W.4 and he assessed the disability as 25%. Disability certificate was marked as Ex.P12. The Tribunal fixed the disability as 15%. **The Tribunal fixed the monthly income as Rs.1,800/-. For 15% Disability,** the Tribunal has fixed the loss of income as Rs.55,080/-

(Rs.1,800 X 15/100 X 12 X 17) . The Tribunal has awarded Rs.3,000/- for pain and sufferings, Rs.3,000/- for extra nourishment, Rs.2,000/- for transport expenses, Rs.1,000/- towards loss of articles. In total the Tribunal has awarded Rs.64,080/- as compensation, which is reasonable. After deducting 10% (Rs.6,408/-) towards contributory negligence, the claimant is entitled to Rs.57,672/- (Rs.64,080/- (-) Rs.6,408/-) as compensation to be paid by the owner of the vehicle.

19. It is seen that the Tribunal fixed the interest at 9% which is excessive and the interest is reduced to 7.5% pa.

20. CMA(MD)No.1339 of 2010 is partly allowed. The insurance company is directed to deposit Rs.4,40,100/- along with interest at the rate of 7.5% p.a. and cost in M.C.O.P.No.32 of 2004.

21. CMA(MD)Nos.1341 of 2010 allowed. The insurance company is exonerated from the liabilities. The owner of the vehicle is directed to deposit Rs.97,650/- along with interest at the rate of 7.5% p.a. And cost in M.C.O.P.No.36 of 2004.

22. CMA(MD)No. 1340 of 2010 allowed. The owner of the vehicle is directed to deposit Rs.57,672/- along with interest at the rate of 7.5% p.a. and cost in M.C.O.P.No.100 of 2004.

23. In the result, CMA(MD)No.1339 of 2010 is partly allowed and CMA(MD)Nos.1340 and 1341 of 2010 are allowed. No costs.

(i) In C.M.A.(MD)No.1339 of 2010, the appellant - Insurance Company, is directed to deposit the entire compensation of Rs.4,40,100/- (if not already deposited) with accrued interest for Rs.2,84,040/- at the rate of 7.5% from the date of petition till the date of deposit and **for Rs.1,56,060/- with interest at the rate of 7.5% from the date of this judgment till the date of deposit and with cost,** within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first claimant- father of the deceased is entitled to Rs.2,00,000/- as compensation with proportionate interest and costs and the second claimant – mother of the deceased is entitled to Rs.2,40,100/- as compensation with proportionate interest. The claimants are permitted to withdraw their respective shares as apportioned by this Court on filing proper petition before the Tribunal.

(ii) In C.M.A.(MD)No.1341 of 2010, the owner of the vehicle, is directed to deposit the entire compensation of Rs.97,650/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) In C.M.A.(MD)No.1340 of 2010, the owner of the vehicle, is directed to deposit the entire compensation of Rs.57,672/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, both the claimants in C.M.A.(MD)Nos.1340 and 1341 of 2010 are permitted to withdraw the award amount, on filing proper petition before the Tribunal. The appellant – Insurance company is permitted to withdraw excess amount, already deposited, if there is any. The claimants are not entitled for interest for the default period, if there is any.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

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To

1.The Sub Judge,
Motor Accident Claims Tribunal ,
Sankarankoil.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)Nos.1339 to 1341 of 2010

17.03.2023