



C.M.A(MD)Nos.1229 to 1231 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2023
DELIVERED ON : 01.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1229 to 1231 of 2017

C.M.A(MD)No.1229 of 2017:

The Branch Manager,
New India Assurance Company Ltd.,
96, Bharathiyar Street,
Saathur,
Virudhunagar District.

... Appellant/3rd Respondent

Vs.

1.P.Ayyanar

... Respondent/Petitioner

2.G.Chinnathambi

3.V.Sundarraaj

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the learned Subordinate Judge, (Motor Accident Claims Tribunal), Kovilpatti in M.C.O.P.No.19 of 2011, dated 29.01.2016.

For Appellant : Mr.S.Ramesh
For R1 : Mr.R.Devaraj
For R2 : No Appearance

For R3 : Mr.M.S.Parthiban



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C.M.A(MD)No.1230 of 2017:

The Branch Manager,
New India Assurance Company Ltd.,
96, Bharathiyar Street,
Saathur,
Virudhunagar District.

... Appellant/3rd Respondent

Vs.

1.P.Muniyasamy

... Respondent/Petitioner

2.G.Chinnathambi

3.V.Sundarraaj

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the learned Subordinate Judge, (Motor Accident Claims Tribunal), Kovilpatti in M.C.O.P.No.20 of 2011, dated 29.01.2016.

For Appellant	: Mr.S.Ramesh
For R1	: Mr.R.Devaraj
For R2	: No Appearance
For R3	: Mr.M.S.Parthiban

C.M.A(MD)No.1231 of 2017:

The Branch Manager,
New India Assurance Company Ltd.,
96, Bharathiyar Street,
Saathur,
Virudhunagar District.

... Appellant/3rd Respondent

Vs.

1.Chandra



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2.Kaliswaran

3.Chinnaguru

4.Lakshmanan

5.Minor.Marikannan

... Respondents/Petitioners

6.G.Chinnathambi

7.V.Sundarraaj

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the learned Subordinate Judge, (Motor Accident Claims Tribunal), Kovilpatti in M.C.O.P.No.21 of 2011, dated 29.01.2016.

For Appellant	: Mr.S.Ramesh
For R1-R5	: Mr.R.Devaraj
For R7	: No Appearance

JUDGEMENT

The present appeals have been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Kovilpatti in M.C.O.P.Nos.19, 20 and 21 of 2011 primarily on the ground of liability.



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2. According to the claimants, all of them were load men, engaged by the owner of the lorry, namely the 2nd respondent to carry stones from the quarry. The said vehicle was driven by the 1st respondent and insured with the 3rd respondent. On 28.01.2010, at about 9.45 a.m., when the lorry after loading stones, was proceeding from north to south direction. The driver lost control of the vehicle and it got overturned. In the said accident, one of the load men, namely Chinnathambi had passed away and the other 2 load men, namely Ayyanar and Muniyasamy were seriously injured. The said Ayyanar had filed M.C.O.P.No.19 of 2011 claiming Rs.10,00,000/- as compensation. Another injured claimant, namely Muniyasamy has filed M.C.O.P.No.20 of 2011 claiming Rs.8,00,000/- as compensation. The legal heirs of the deceased Chinnathambi had filed M.C.O.P.No.21 of 2011 seeking a sum of Rs.10,00,000/- as compensation. In all the claim petitions, the claimants have contended that the driver of lorry lost his control and it overturned and the injured/deceased load men were caught under the lorry with loaded stones and sustained injuries.

3. The driver and owner of the lorry have filed a counter admitting the accident, but disputed the quantum of compensation. They have further contended that since the lorry is insured with the 3rd respondent,



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only the 3rd respondent is liable to pay the compensation.

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4. The 3rd respondent / insurance company has filed a counter contending that the claimants have not proved the negligence on the part of the lorry driver. The insurance company further disputed the fact that the driver of the lorry was not having a valid driving license at the time of accident. In Paragraph No.5 of the counter, the respondent have disputed the averments that the petitioner was working as a load men and earned a sum of Rs.250/- per day and Rs.6,500/- per month.

5. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has happened only due to the rash and negligent driving of the 1st respondent. The tribunal further relied upon deposition of the owner of the lorry and came to a conclusion that all the 3 persons have travelled only as a load men engaged by the lorry owner. The tribunal relied upon Exhibit R.3 which is the insurance policy and arrived at a finding that it is a package policy and held that the insurance company is liable to pay compensation.

6. The tribunal after considering the contentions of the learned counsel appearing for the insurance company that they are not liable to



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pay any compensation for the injury or death of gratuitous passengers travelling in a goods vehicle, arrived at a finding that all the three persons have travelled only as a load men and not as a gratuitous passengers. In view of the said findings, the tribunal concluded that the insurance company is liable to pay the compensation. The tribunal awarded a sum of Rs.4,20,000/- in M.C.O.P.No.19 of 2011 for the injured claimant, namely P.Ayyanar. The tribunal awarded a sum of Rs.4,00,000/- to another injured claimant, namely P.Muniyasamy in M.C.O.P.No.20 of 2011. The tribunal awarded a sum of Rs.7,72,000/- to the legal heirs of the deceased load men, namely Chinnathambi in M.C.O.P.No.21 of 2011. These 3 awards passed by the tribunal are under challenge in the present appeals.

7. The contentions of the learned counsel appearing for the appellants are as follows:

(i) All the three persons have travelled as a gratuitous passengers in the goods carriage. Therefore, the package policy does not cover the gratuitous passengers and the insurance company is not liable to pay any compensation.

(ii) Though all the 3 persons are said to have travelled as a load men, there is no legally acceptable oral or documentary evidence to



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prove that they were load men at the time of accident.

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(iii) Even assuming that they are load men, they can travel only inside the cabin and not in the body of the lorry. In the present case, admittedly they have travelled by sitting above the loaded stones and therefore, there is a clear violation of statutory provisions and hence, the company is not liable to pay any compensation.

(iv) The learned counsel for the appellant relied upon a judgment of the Hon'ble High Court of Chhattisgarh at Bilaspur reported in **2020 SCC Online Chh 1452 (Branch Manager, HDFC ERGO General Insurance Co. Ltd. & Another Vs. Sitaram & Others)** to contend that they are not liable to pay any compensation to the injury or death of any passenger in a goods carriage.

8. The contentions of the learned counsel appearing for the respondents are as follows:

(i) The accident has taken place at 09.45 a.m. on 28.01.2010 and an F.I.R was lodged at 10.30 a.m. on the same day which was lodged by one of the co-traveller. In the said F.I.R., it has been specifically pointed out that they have travelled in the lorry only as load men.



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(ii) He further contended that both the injured claimants, in their cross-examination have stuck to their stand that they have travelled only as a load man and the said deposition has not been discredited by the cross-examination conducted by the insurance company.

(iii) The owner of the lorry, namely Sundarraaj has been examined as R.W.3 in all the claim petitions. He has also admitted that all the three persons have travelled only as a load men.

(iv) The counter filed by the insurance company does not specifically dispute the fact that the injured/deceased person is not a load man, but only a gratuitous passenger. The company has simply denied the averments that the injured/deceased claimant is not a load man in Paragraph No.5 of the counter in each one of the claim petitions.

(v) The F.I.R, claim petition and the evidence of the claimants would clearly indicate that they were travelling along with the blue metal and the injury and death were caused due to the fact that they were caught under the lorry with loaded stones. Therefore, there cannot be any dispute that the claimants have travelled only as a load men in the lorry and not as a gratuitous passengers.

(vi) The policy which is marked as Exhibit R.3 indicates that it is a package policy and therefore, it covers the load men also.

(vii) The learned counsel for the respondents further contended



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that Rule 236 of Tamil Nadu Motor Vehicles Rules, 1989 permits six passengers apart from the driver to be carried in the goods carriage. He further contended that Rule 238 does not totally prohibit persons sitting on the top of the goods carriage, but only prohibits the sitting of a person at a height exceeding 300 cms. from the surface upon which vehicle rests. He further contended that the regional transport authority or the state transport authority have got powers to allow a large number of person to be carried in a goods vehicle as per Rule 239. Therefore, according to the learned counsel appearing for the claimants and the owner of the vehicle that there is no absolute prohibition of travelling of persons on the top of the goods carriage. Consequently, the contention of the learned counsel appearing for the insurance company that unless the load men travelled in a cabin, the company is not liable to pay compensation for the injuries / death of load men is not legally sustainable.

(viii) He further contended that as per Exhibit R.2 registration certificate of the lorry, it has a seating capacity of 3 persons including a driver. However, Rule 236 of Tamil Nadu Motor Vehicles Rules permits six persons to be carried in a goods vehicle in addition to the driver. Therefore, in addition to the driver, 2 persons can be accommodated in the cabin and another 4 persons would be entitled to travel on the top of



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the goods carriage.

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(ix) He further contended that when there is no absolute prohibition for the load men to travel on the top of the goods carriage and there is a policy covering the said persons, the insurance company cannot plead that there is no coverage for the load men, especially, when there is no statutory violation.

(x) The learned counsel appearing for the respondents had relied upon a judgment of our High Court in *C.M.A(MD)No.972 of 2011*, dated 08.10.2018 in *(Manjula Vs. M.Sakthivel)* to impress upon the Court that when additional premium is paid under IMT 37-A, the company cannot refuse to satisfy the award just because some of the load men have travelled on the backside of the goods vehicle.

(xi) The learned counsel appearing for the respondents relied upon another judgment of our High Court reported in *2022 ACJ 1290 (The Branch Manager, Reliance, General Insurance Co.Ltd., Vs. Elumalai & Others)* to impress upon the Court that when the policy is a package policy and the injured persons are coolies, just because they have travelled on the top of the goods, the company cannot refuse to pay the compensation. The learned counsel appearing for the respondents further relied upon a judgment of our High Court in *C.M.A.No.1665 of 2018 (M/s.Reliance General Insurance Company Limited Vs. Amudha &*



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Others), dated 07.02.2023 where the learned Judge has followed the judgment in Manjula's case referred supra and confirmed the award as against the insurance company. Hence, he prayed for confirming the award passed by the tribunal.

9. I have carefully considered the submission made on either side and perused the records.

10. It is the specific case of the claimants that they have travelled as a load men engaged by the owner of the lorry which was carrying blue metal. Admittedly, the claimants were travelling on the blue metal, namely on the back side of the goods vehicle and not in the cabin. Let us now consider whether the claimants are load men in the goods carriage or they have travelled as a gratuitous passengers.

11. In the F.I.R which was lodged within 1 hour from the time of accident, one of the passengers in the lorry (who was travelling in the cabin) has given a statement to the police that all the claimants were load men travelling in the said lorry along with the goods. A charge sheet has also been filed as against the driver of the lorry in Exhibit P.2. A perusal of the RC book of the lorry marked as Exhibit R.2 indicates that it has



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got a seating capacity of 3 including a driver. The insurance company in their counter have not specifically contended that the claimants were travelling as gratuitous passengers in the goods carriage. The owner of the lorry, who had engaged the claimants has been examined as R.W.3, who was categorically deposed that he had engaged the 3 claimants as load men for travelling along with the goods, namely blue metal. The injured claimants have been examined as P.W.1 in all the claim petitions, who have categorically deposed that they have travelled as a load men. The evidence of the injured claimants or the owner of the lorry has not been discredited by the insurance company by their cross-examination. Considering the fact that the claimants have travelled on the top of the blue metal and the evidence of P.W.1, R.W.3 and F.I.R, this Court has no hesitation to come to a conclusion that the claimants have travelled only as a load men in the lorry at the time of accident.

12. The learned counsel for the appellant has contended that even assuming that the claimants are load men, unless they have travelled in the cabin of the lorry, the insurance company cannot be called upon to pay compensation for the injury or the death caused by an accident. In other words, when the claimants admittedly have travelled on the top of the vehicle over the goods, the company is not liable to pay any



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compensation. Let us now consider the said submission whether there is any total prohibition of travelling over and above the goods for any coolie or a load man under the relevant provisions of the statute.

13. Rule 236 of the Tamil Nadu Motor Vehicles Rules 1989 speaks about the total number of persons to be carried in the cabin of a goods carriage. As per the said Rule, a maximum number of 6 persons including the driver can be carried in the cabin of a goods carriage. In the present case, admittedly the claimants have not travelled in the cabin and therefore, the question of invoking Rule 236 to contend that 5 persons apart from the driver can travel in the goods carriage is not legally sustainable.

14. A perusal of Rule 238 of Tamil Nadu Motor Vehicles Rules indicates that no person can be carried in the goods vehicle upon the goods and in such a manner that the person is in danger of falling from the vehicle. It further points out that in no case any person can be carried in a goods vehicle in such a manner that any part of his person when he is in a sitting position, he is at a height exceeding 300 cms from the surface upon which the vehicle rests. When a person travels upon the goods in a sitting position, it should not exceed 300 cms from the road.



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Therefore, the burden is upon the insurance company to establish that when the claimants were sitting upon the goods, it was higher than 300 cms from the road. In the present case, the insurance company has not discharged the said burden.

15. Such an interpretation of Rule 238 is supported by reading of Rule 239 to 241. Rule 239 clearly indicates that the Regional Transport Authority or State Transport Authority can permit or allow a large number of persons to be carried in a goods carriage subject to certain conditions. As per Rule 240, nothing in Rule 236, 238 and 239 will deem to authorize the carriage of any person for hire or reward on any goods carriage. Rule 241 clearly points out that no person shall travel in a goods carriage except in accordance with Rule 240.

16. A combined reading of Rules 238 to 241 clearly indicates that there is no absolute prohibition for the travelling of a person upon the goods in a goods carriage provided in a sitting position, the height does not exceed 300 cms from the road. In fact, the authorities have got power to allow large number of persons to be carried in a goods carriage on certain conditions. However, no person can be carried for a hire or



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reward on a goods carriage. Therefore, it is clear that when a person travels in a goods carriage over and upon the goods as a load man/coolie and in a sitting position and it's height does not exceed 300 cms from the road, the same can never be construed to be a statutory violation. Hence, the contention of the learned counsel appearing for the appellant / insurance company that if a load man / coolie have travelled upon the goods, it would amount to statutory violation, is not legally sustainable.

17. Let us now consider whether the package policy of the lorry which is marked as Exhibit R.3 covers the load men / coolie who have travelled upon the goods in a goods carriage. A perusal of Exhibit R.3 insurance policy indicates that the package policy has been issued covering IMT endorsement numbers, namely IMT 22,23,29,37-A and 42. A careful perusal of IMT 37-A reveals that it is a legal liability to non-fare paying passengers who are not employees of the insurer for a commercial vehicle. As per the said IMT, it covers a charterer or representative of the charterer of the truck. It also covers any other person directly connected with the journey in one form or the other being carried in or upon or entering or mounting or alighting from vehicle insured described in the schedule of this policy. Therefore, it is clear that the load men / coolie is a person connected with the journey in one form



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or the other and they are being carried in the vehicle insured.

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18. Therefore, Exhibit R.3 insurance policy of the lorry covers the load men / coolie, who had travelled upon the goods when additional premium has been paid under IMT 37-A of India Motor Tariff, 2002. Therefore, the contention of the learned counsel appearing for the appellant that they are not liable to pay any compensation to the claimants in view of the fact that the policy does not cover the load men / coolie is not legally sustainable in view of the additional premium paid by the insured person under IMT 37-A under the package policy.

19. The tribunal after considering the injuries sustained by the claimants and the income of the deceased load man, has arrived at a finding that they are entitled to receive compensation. In M.C.O.P.No.19 of 2011 for the injuries sustained by the claimant, an award of Rs. 4,20,000/- has been awarded taking into consideration that he had sustained 80% permanent disability based on Exhibit P.6 which is an Identity Card issued by the Government of Tamil Nadu for physically challenged persons. In M.C.O.P.No.20 of 2011, the tribunal has awarded Rs.4,00,000/- to the injured claimant considering the fact that he had sustained 80% disability based upon the disability certificate marked as



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Exhibit P.6. In M.C.O.P.No.21 of 2011, the tribunal has awarded a sum of Rs.7,72,000/- for the death of the load man after fixing a notional income at Rs.2,500/- per month. Considering the age of the deceased as 40, multiplier of 15 has been applied. Since there are 5 claimants, 1/4th of the income was deducted towards personal expenses. 30% was added towards future prospects and ultimately, a sum of Rs.7,72,000/- has been awarded. Considering the award amount in all these claim petitions in the light of the documents and the facts and circumstances of the case, this Court does not find the quantum of award to be either excessive or unreasonable. Therefore, the quantum of award passed by the tribunal in all the claim petitions are hereby confirmed.

20. In view of the above said deliberations, the award of the tribunal fixing liability upon the insurance company and the quantum of award are hereby confirmed. All the Civil Miscellaneous Appeals are dismissed. No costs.

01.06.2023

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

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To

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- 1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Kovilpatti.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)Nos.1229 to 1231 of 2017

01.06.2023