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C.M.A.Nos.2270 to 2282 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2270 to 2282 of 2008

C.M.A.No.2270 of 2008:

The Oriental Insurance Company Ltd.,
Chennai.

... Appellant

Vs.

1. Ramasamy

2. Pachaiyammal

3. Janarthanan

4. The National Insurance Company Ltd.,
Salem.

5. Babu Rao

... Respondents

(Respondents 3 & 5 were set exparte in the lower
Court. Hence, notice to them are dispensed with)



C.M.A.Nos.2270 to 2282 of 2008

PRAYER : Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.08.2007 passed in M.C.O.P.No.278 of 1997 on the file of the Motor Accident Claims Tribunal / Sub Court, Athur.

For Appellant	:	Mr.R.Sivakumar
in all cases		
For Respondents	:	Ms.V.Pavithra
		for Mrs.V.Srimathi
		for R1&R2 in C.M.A.Nos.2270 to
		2274 of 2008 and
		for R1 in C.M.A.Nos.2275 to 2282
		of 2008

COMMON JUDGMENT

These appeals are filed against the common order passed in M.C.O.P.Nos.278, 279, 281, 282 & 283 of 1997 and 200, 201, 15, 84 of 1998, 10, 11, 12 and 39 of 1999. Since all the claim petitions were filed claiming compensation for the same accident, these appeals are taken up for hearing and disposed of through this common judgment.

2. For the sake of brevity, the parties are referred to as per their rank before the Tribunal.

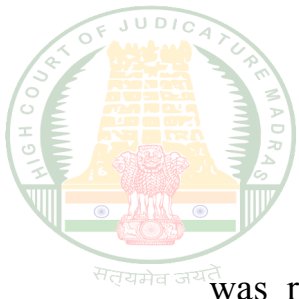


C.M.A.Nos.2270 to 2282 of 2008

WEB COPY

3. The accident occurred on 15.09.1996 wherein some had expired and some sustained grievous injuries. A lorry bearing Registration No.TAS-5212 in which the deceased and the injured were traveling collided against tanker lorry bearing Registration No.TSH-959 near Athur Pudupet, as a result of the said accident, some of the passengers traveling in the lorry died and some were injured. FIR No.1712 of 1996 was filed. The second respondent / Insurance Company denied the age, occupation and income of the claimants on the ground that no documents have been filed to substantiate the same. Moreover, the Insurance Company also challenged the MCOPs on the ground of negligence stating that there was a policy violation as passengers were gratuitous passengers. The fourth respondent / Insurance Company denied the liability on the ground that both the lorry driver and the tanker lorry driver did not have the driving licence and therefore, the owners of the vehicles are to be made liable.

4. The Tribunal after going through the materials placed on record and the evidences came to the conclusion that the driver of the tanker lorry



C.M.A.Nos.2270 to 2282 of 2008

WEB COPY

was responsible for the accident and passed a common award granting compensation to each of the claimants. Challenging the said common award, the fourth respondent / Insurance Company with which the tanker lorry was insured has filed the present appeals.

5. The learned counsel for the appellant / Insurance Company challenge the common award on the ground that the accident occurred due to the negligence on the part of both the drivers, i.e., lorry as well as the tanker lorry and that the Tribunal failed to note that the drivers of both the vehicles were not examined and there is no contra evidence and therefore, fixing of the liability on only one of the vehicle, is not justifiable. The learned counsel further added that more than 75 persons traveled in the lorry bearing Registration No.TAS-5212 which is a goods carrying vehicle and hence, it is in violation of Motor Vehicles Act and the terms and conditions of the policy. The other grounds raised by the learned counsel for the appellant is that the driver of the lorry was not having necessary driving licence and this fact though elicited in Ex.R2 and the same was not



C.M.A.Nos.2270 to 2282 of 2008

WEB COPY

considered by the Tribunal. The appellant / Insurance is also aggrieved of the award being passed fixing the sole liability on the Insurance Company without ordering pay and recovery. Therefore, the learned counsel for the appellant seeks for setting aside the common award passed in all these claim petitions.

6. Per contra, the learned counsel appearing for the respondents submitted that, the Tribunal taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference.

7. Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Admittedly FIR has been filed as against the driver of the tanker lorry as Ex.P1. Though the learned counsel appeared before the Tribunal for the fourth respondent / Insurance company / appellant herein



C.M.A.Nos.2270 to 2282 of 2008

WEB COPY

has taken a stand that the accident had occurred only due to the rash and negligent driving of the lorry and that the driver of the lorry was not possessing valid driving licence. The eye witness has categorically stated that the tanker lorry was driven in a rash and negligent manner and therefore, the Tribunal came to a conclusion that the tanker lorry was responsible for the accident. As many as 17 witnesses were examined on the side of the claimants and 34 documents were filed whereas one witness was examined on behalf of the respondents and only two documents namely insurance policy and driving licence marked before the Tribunal.

9. Therefore, this Court is able to find that the accident occurred only due to the rash and negligent driving of the driver of the tanker lorry and the Tribunal has rightly come to the conclusion that the offending vehicle was only the tanker lorry. With respect to the compensation awarded, this Court is agreeing with the quantum of compensation awarded.



C.M.A.Nos.2270 to 2282 of 2008

10. Holding so, these Civil Miscellaneous Appeals are dismissed.

However, there shall be no order as to costs.

06.12.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The National Insurance Company Ltd.,
Salem.
2. The Motor Accident Claims Tribunal / Sub Court,
Athur.
3. The Section Officer,
V.R. Section, High Court,
Chennai.



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C.M.A.Nos.2270 to 2282 of 2008

M.DHANDAPANI, J.

vji

C.M.A.Nos.2270 to 2282 of 2008

06.12.2024