**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 18.11.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**C.M.A.Nos.756 of 2018 and 1622 of 2021**

**C.M.A.No.756 of 2018**

M/s.The New India Assurance Company Limited,
No.17, Fort Main Road, Shevapet,
Salem. ... Appellant

*Vs.*

1.Saraladevi

2.P.Palanisamy

3.Umarani ... Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 07.07.2015 passed in M.C.O.P.No.1433 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1), Salem.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance

**C.M.A.No.1622 of 2021**

M/s.The New India Assurance Company Limited,
No.17, Fort Main Road, Shevapet,
Salem. ... Appellant

*Vs.*

1.Chellakannu

2.P.Palanisamy

3.Umarani ... Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 14.12.2018 passed in M.C.O.P.No.347 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1), Salem.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : No appearance

**<u>COMMON JUDGMENT</u>**

Both these appeals are taken up together since the issue involved is common and hence, this common judgment is passed.

2. For the sake of convenience and clarity, the appellant is referred to as the Insurance Company and the first respondent in both the appeals are referred to as the claimants and the respondents 2 and 3 are referred to as per their rank herein.

3. The appellant insurance company, aggrieved by the liability fixed on them by the Motor Accident Claims Tribunal, Special Sub Judge I, Salem, in M.C.O.P.Nos.1433 of 20112 and 347 of 2014, dated 07.07.2015 and 14.12.2018, has filed these appeals.

4. The claimants were working as load man in the lorry belonging to the respondents 2 and 3. While so, on 14.05.2011 at about 01.00 p.m., the claimants were travelling in the said lorry and due to the rash and negligent driving of the lorry by its driver, the lorry was capsized owing to which the claimants sustained grievous injuries. Since the accident occurred due to the rash and negligent driving of the lorry by its driver, the claimants filed

M.C.O.P.Nos.347 of 2014 and 1433 of 2012 on the file of MACT, Special Sub Court I, Salem, seeking compensation.

5. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to the conclusion that the accident has occurred only due to the rash and negligent driving on the part of the driver of the lorry.

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Considering the fact that the claimant was employed under the first respondent, the Tribunal granted compensation under the Workmen Compensation Act (Employee's Compensation Act) and accordingly, awarded a sum of Rs.1,60,000/- [5985*60/100*221.37*20/100] as compensation. The compensation was calculated in the following manner:

| | | |
|---|---|---|
| 1. | Date of Accident | 14.05.2011 |
| 2. | Minimum wages as per Employee's Compensation Act for May 2011 | Rs.5,985/- (60% for injured) |
| 3. | Age of employee at the time of accident | 22 years |

| | | |
|---|---|---|
| 4. | Factor applicable as per Act | 221.37 |
| 5. | Percentage of disability to the petitioner | 20% |
| 6. | Amount of compensation | Rs,1,60,000/- |

The compensation of Rs.1,60,000/- was directed to be paid to the claimant by the Insurance Company along with interest at the rate of 7.5% from the date of petition till the date of payment in the first instance and later, recover the same from the respondents 2 and 3 or from the owner of the insured vehicle.

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While deciding the compensation under various heads, the Tribunal came to a conclusion that the following compensation can be awarded:

| Sl.No. | Compensation awarded under the head | Amount (in Rs.) |
|---|---|---|
| 1. | Permanent disability | 60,000/- |
| 2. | Pain and suffering | 15,000/- |
| 3. | Loss of Income | 9,000/- |
| 4. | Transportation | 5,000/- |
| 5. | Nutrition | 5,000/- |

| | | |
|---|---|---|
| 6. | Attender charges | 5,000/- |
| 7. | Medical expenses | 3,000/- |
| 8. | Loss of amenities | 2,000/- |
| 9. | Damages to clothes | 1,000/- |
| | **Total** | **1,05,000/-** |

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

6. Questioning the liability fixed by the Tribunal, the appellant insurance company has filed the present appeals.

7. Learned counsel for the appellant insurance company submits that the claimants were travelling in the goods vehicle as unauthorised passengers for whom no coverage was provided. Further, the driver of the lorry did not possess a valid driving licence at the time of accident and the driving license expired on 31.10.2010 and the accident had occurred on 14.05.2011. After the expiry of driving license, which was marked as Ex.X4, the accident had occurred. Further, the owner of the vehicle did not

pay insurance premium for the employees who were employed in the lorry. Hence, the appellant insurance company is not liable to pay any compensation.

8. Though notice was served to the claimants and the respondent Nos.2 and 3, none appeared on behalf of them.

9. This Court carefully considered the submissions made on behalf of the appellant and also perused the materials available on record and also carefully went through the award passed by the Tribunal.

10. This Court perused the insurance policy marked as Exs.R1 and R4 and it is seen that third party insurance has been paid and no additional premium was paid to the persons employed for loading and unloading. In the absence of any specific premium being paid in respect of persons employed, fastening the liability on the Insurance Company is unsustainable. Further, it is the specific case of the appellant that the driver

of the offending vehicle was not in possession of a valid driving license at the time of accident, which has neither been disputed nor established to the contra before the Tribunal by the respondents. In the absence of any specific materials establishing all the aforesaid facts, the insurance company cannot be fastened with any liability to pay the compensation to the claimants.

11. For the reasons aforesaid, these Civil Miscellaneous Appeals are allowed and the Insurance Company is permitted to withdraw the amount if any deposited by them. However, it is open to the workmen to claim compensation from the employer in the manner known to law. There shall be no order as to costs.

**18.11.2024**

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb

To

1.The Motor Accidents Claims Tribunal,
(Special Sub Court No.1), Salem.

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

**M.DHANDAPANI, J.**

ssb

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