



C.M.A.Nos.1259, 1261 and 1266 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.Nos.1259, 1261 and 1266 of 2024

and

C.M.P.Nos.11315, 11335 and 11402 of 2024

In CMA 1259 of 2024

The New India Assurance Co. Ltd.,
Divisional Office,
Sethu Krishna Trade Centre,
Trichy Main Road, Gugai, Salem.
Now at Third Party Claims Hub,
No.232, NSC Bose Road,
Chennai – 600 001.

... Appellant

Vs.

1. Chinnathambi
2. Lakshmi

.... Respondents

In CMA 1261 of 2024

The New India Assurance Co. Ltd.,
Divisional Office,
Sethu Krishna Trade Centre,
Trichy Main Road, Gugai, Salem.
Now at Third Party Claims Hub,
No.232, NSC Bose Road,
Chennai – 600 001.

... Appellant



C.M.A.Nos.1259, 1261 and 1266 of 2024

Vs.

1. Chinnathambi
2. Lakshmi

.... Respondents

In CMA 1266 of 2024

The New India Assurance Co. Ltd.,
Divisional Office,
Sethu Krishna Trade Centre,
Trichy Main Road, Gugai, Salem.
Now at Third Party Claims Hub,
No.232, NSC Bose Road,
Chennai – 600 001.

... Appellant

Vs.

1. Chinnathambi
2. Lakshmi

.... Respondents

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 01.11.2022 in M.C.O.P. 1143, 1144 and 1142 of 2020 on the file of the Motor Accidents Claims Tribunal, Special District Judge, Salem.

In all CMAs :

For Appellant : Mr.R.Rajesh

For Respondents : No appearance

COMMON JUDGMENT

The appellant in all the appeals are the New India Assurance Company Limited, Salem, and they are the second respondent in M.C.O.P. 1142, 1143 and 1144 of 2020 on the file of the Motor Accidents Claims



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Tribunal, Special District Judge, Salem, has filed the present appeals.

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2. The first respondent in all the present appeals in CMA.Nos.1259, 1261 and 1266 of 2024 filed the claim petitions under Section 166 of the Motor Vehicles Act in M.C.O.P. 1142, 1143 and 1144 of 2020, respectively seeking compensation for the death of Nithya, Chandra and Sakthivel (wife and children of claimant), in a road accident that took place on 17.11.2019.

3. The brief case of the claimant /appellant in nutshell is as follows:

On 17.11.2019, Nithya (since deceased), Chandra (since deceased) and Sakthivel (since deceased) were travelling as pillion riders in a two wheeler bearing registration No.TN-77-K-9483 on Veeraganur – Attur Main Road. When they were nearing Thedavur Kamaraj Nagar bus stop, Gangavalli, a bus bearing Registration Number TN-77-J-4599 belonging to the second respondent came in the opposite direction and hit the two wheeler resulting in their instantaneous death.

4. According to the claimant, the rash and negligent driving of the



driver of the bus bearing Registration Number TN-77-J-4599 was the cause of the accident and that since the said vehicle was insured with the present appellant, the New India Assurance Company Limited, Salem, the owner of the bus (second respondent) and the insurer are jointly and severally liable to pay compensation to him.

5. In the Tribunal, the owner of the bus (in all the claim petitions) remained absent and was set *ex parte*. The present appellant, the New India Assurance Company Limited, Salem, resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal after analysing the evidence on record fastened negligence on the part of the driver of the bus and awarded compensation of Rs.9,09,000/- for the death of Nithya, Rs.9,85,000/- for the death of Chandra and Rs.9,09,000/- for the death of Sakthivel, together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 01.11.2022. The Tribunal also held that the liability of the owner of the bus and the insurer is joint and several.

7. Questioning the liability, to pay compensation to the claimants,



the appellant, the New India Assurance Company Limited, Salem, has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

8. Heard Mr.R.Rajesh, learned counsel for the appellant.

9. Mr.R.Rajesh, learned counsel for the appellant contended that in the final report, the police had stated that minor Sakthivel was riding the two wheeler and in the circumstances, the Insurance Company is not liable to pay compensation.

10. There is no representation on behalf of the claimants. The FIR (Ex.P1) was registered against the driver of the bus and the police after conducting investigation had laid a final report against the driver of the bus. It is clear from the final report that the driver of the bus was the wrong doer. It is true that in the final report, it is mentioned that Sakthivel (since deceased) was riding the two wheeler, who, according to the counsel for the Insurance Company was a minor on the date of accident.

11. It is pertinent to point out that the driver of the bus was not examined on the side of the contesting respondent, the Insurance Company.



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Therefore, merely based on the police report it cannot be concluded that the minor was actually riding the two wheeler at the time of accident. The FIR which was registered immediately after the accident shows that one Rani was riding the two wheeler and the other persons were travelling as pillion riders. Moreover the negligence is fastened on the driver of the bus by the Tribunal based on evidence and in the circumstances I do not see any reason to interfere with the findings recorded by the Tribunal.

12. In the result,

- i. The Civil Miscellaneous Appeals are stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.
- ii. The Award passed in M.C.O.P. 1143, 1144 and 1142 of 2020 dated 01.11.2022 by the Motor Accidents Claims Tribunal, Special District Judge, Salem, are upheld.

28.08.2024

Index: Yes/No
Internet: Yes/No
Speaking/non Speaking order
mtl



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To

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- 1 . The Motor Accidents Claims Tribunal, Special District Judge, Salem.
- 2 . The Section Officer, VR Section, Madras High Court, Chennai.

R.HEMALATHA, J.

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