



C.M.A.Nos.492 & 493 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.Nos.492 & 493 of 2023

and

C.M.P.Nos.4274 & 4280 of 2023

C.M.A.No.492 of 2023:

The New India Assurance Co. Ltd.,
M.L.Complex, 1st Floor, 10/11 Church Road,
Dharapuram .
Appellant

..

Vs.

1.Thilagavathi

2.Arockiyaraj

3.Arockiyaraj

.. Respondents

(RR 2 & 3 are not necessary party.
Hence, given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common award and Decree dated 23.12.2021 passed in M.C.O.P.No.515 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharapuram.



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C.M.A.No.493 of 2023:

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The New India Assurance Co. Ltd.,
M.L.Complex, 1st Floor, 10/11 Church Road,
Dharapuram . ..
Appellant

Vs.

1.Minor.Mahalakshmi
(Represented by her Guardian
and next friend, father Vadivel)

2.Arockiyaraj

3.Arockiyaraj .. Respondents

(RR 2 & 3 are not necessary party.
Hence, given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the common award and Decree dated 23.12.2021 passed in M.C.O.P.No.509 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharapuram.

(In both cases):

For Appellant : Ms.G.Sukumari

COMMON JUDGMENT

These appeals arise out of a common award passed by the Tribunal and therefore, a common judgment is passed in these appeals.



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2.The Insurance Company has filed these appeals against the common award passed in M.C.O.P.Nos.509 & 515 of 2017 on the file of the Motor Accident Claims Tribunal, Sub Court, Dharapuram, dated 23.12.2021.

3.The case of the claimants is that they were traveling in a Bolero Pickup van from Vanachinnappan Church at Dharapuram – Bhagavan Kovil road on 23.04.2016 and at about 04.00 PM, the offending vehicle was driven by the 1st respondent in a rash and negligent manner and as a result, the vehicle capsized resulting in all the claimants sustaining injuries. It is under these circumstances, two individual claim petitions came to be filed before the Tribunal seeking for payment of compensation.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent before the Tribunal.



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Having reached such a conclusion, the Tribunal also found that the claimants were all traveling in a goods vehicle as gratuitous passengers, but however, the Tribunal proceeded to apply the pay and recovery principle and thereby directed the Insurance Company to pay the compensation amount and recover the same from the owner of the offending vehicle. The Tribunal thereafter proceeded to fix the compensation in both the cases. In so far as M.C.O.P.No.509 of 2017 is concerned, the Tribunal fixed the total compensation of Rs.94,000/- and directed the same to be paid with interest at the rate of 7.5% per annum. In so far as M.C.O.P.No.515 of 2017 is concerned, the Tribunal awarded the compensation of Rs.5,13,000/- which was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company aggrieved by the award passed by the Tribunal has filed these appeals before this Court.

6.Heard the learned counsel for the appellant. The respondents have been served with notice and their names have also been printed in the cause list. They neither appear in person nor through counsel.



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2 TNMAC 731 (DB), (Bharati AXA General Insurance Co. Ltd., Vs.

Aandi and others). This Court held that where the claimants had traveled in the goods vehicle as gratuitous passengers or as unauthorized passengers, the insurer cannot be made to pay the compensation and the pay and recovery principle cannot be applied. These judgments are squarely applicable to the facts of the present case.

11.In the light of the above discussions, this Court holds that the Insurance Company is not liable to pay the compensation to the claimants and the finding in that regard by the Tribunal by applying the pay and recovery principle is hereby set aside. The compensation amount that has been fixed by the Tribunal is liable to be paid by the owner of the vehicle, who is the 3rd respondent in these appeals and the 1st respondent in the claim petitions.

12.Thus,

(i)The compensation awarded by the Tribunal in M.C.O.P.No.515 of 2017 at Rs.5,13,000/- is confirmed. The 3rd respondent shall deposit



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the compensation amount with interest at the rate of 7.5% per annum within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent / claimant is entitled to withdraw the same in the manner indicated by the Tribunal. In so far as the appellant – Insurance Company is concerned, the amount that has been deposited by them with interest and costs shall be permitted to be withdrawn by them. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

(ii) The compensation awarded by the Tribunal in M.C.O.P.No.509 of 2017 at Rs.94,000/- is confirmed. The 3rd respondent shall deposit the compensation amount with interest at the rate of 7.5% per annum within a period of eight (8) weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent / claimant is entitled to withdraw the same in the manner indicated by the Tribunal. In so far as the appellant – Insurance Company is concerned, the amount that has been deposited by them with interest and costs shall be permitted to be withdrawn by them. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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13.In the result, C.M.A.Nos.492 & 493 of 2023 are allowed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Sub Court,
Dharapuram.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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N.ANAND VENKATESH, J.

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