



C.M.A.Nos. 4199 and 4204 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos. 4199 and 4204 of 2019 and
C.M.P.Nos.23729 and 23735 of 2019

Divisional Manager,
National Insurance Company Limited,
No.122/165, Nethaji Road,
Manjakuppam,
Cuddalore.

... Appellant in both C.M.As

Vs.

1. Kalliyar
2. Venkatachalam (Died)
3. Jayaprakash
4. Prasad
5. Prasanna

(R-2 died, Respondents 3 to 5 are brought on record as Lrs of the deceased R2 – viz Venkatachalam vide Court order dated 06.11.2014 made in C.M.P.No.10154 of 2024 in C.M.A.No.4199 of 2019)

... Respondents in C.M.A.No.4199 of 2019

1. Rajakannu
2. C.Venkatachalam (Died)
3. Jayaprakash
4. Prasad
5. Prasanna

(R-2 died, Respondents 3 to 5 are brought on record as Lrs of the deceased R2 – viz Venkatachalam vide Court order dated 06.11.2014 made in C.M.P.No.10173 of 2024 in C.M.A.No.4204 of 2019)



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Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in MACTOP.Nos.825 and 1993 of 2008, dated 01.08.2014 on the file of Motor Accidents Claims, Tribunal Cuddalore Cum Special Subordinate Judge, Cuddalore.

In both C.M.As:

For Appellant : Mrs.N.B.Surekha
For Respondents : Mr.P.R.Pradeep for R1
Mr.T.S.Baskaran for R3 to
R5
R2 - Died

COMMON JUDGMENT

Aggrieved by the common award passed by the Motor Accidents Claims Tribunal (Special Subordinate Judge), Cuddalore in M.C.O.P. Nos. 825 and 1993 of 2008, insurance company has filed these appeals.

2. Brief facts are that on 15.03.2007 at about 07.30 a.m., when the claimants/first respondent(s) were travelling in a tyre cart attached to the tractor bearing Regn. No.TN 31 P 1163, near Periyapattu on Cuddalore-Chidambaram Main Road, due to the rash and negligent driving of the driver of the tractor, the tractor got capsized and the claimants suffered grievous injuries all over the body. Immediately after the accident, the



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claimants were admitted in hospital and treated as inpatients for a month.

Alleging that the accident was due to the rash and negligent driving of the driver of the tractor, the claimants filed the claim petitions being M.C.O.P.Nos.825 and 1993 of 2008 respectively claiming compensation of Rs.10,00,000/- each.

3. Resisting the claim petitions and also denying the manner of accident, age and avocation of the claimants, the insurance company filed counter affidavits. It is the specific defence of the insurance company that the driver of tractor has got no right to toe the tyre cart and the claimants have no right to travel in the tyre cart, as per the policy conditions. It is further stated that the claimants travelled as gratuitous passengers and therefore, the insurance company is not liable to pay compensation.

4. To substantiate the claim, the claimants examined themselves as P.W.1 and P.W.2 respectively and the doctor who treated them as P.W.3 and marked Exs.P1 to P15. On behalf of the appellant insurance company, one Mr.Rajendran was examined as D.W.1 and no documents



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were marked.

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5. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the tractor and therefore, the owner of the tractor and the insurance company are liable to pay the compensation either jointly or severally.

6. Insofar as M.C.O.P.No.825 of 2008 is concerned, the Tribunal determined the total compensation payable at Rs.1,22,010/- together with interest at 7.5% per annum under various heads in the following manner:

<i>Head</i>	<i>Compensation Awarded by the Tribunal</i>
Permanent Disability (Rs.2,000/- x 30%)	Rs.60,000. 00
Pain and suffering	Rs.15,000.00
Transport and other charges	Rs.15,000.00
Extranourishment	Rs.15,000.00
Medical expenses	Rs.2,010.00
Loss of amenities	Rs.10,000.00
Future medical expenses	Rs.10,000.00
Total	Rs.1,22,010.00



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7. Insofar as M.C.O.P.No.1993 of 2008 is concerned, the Tribunal determined the total compensation payable at Rs.1,18,580/- together with interest at 7.5% per annum under various heads in the following manner:

<i>Head</i>	<i>Compensation Awarded by the Tribunal</i>
Permanent Disability (Rs.2,000/- x 23%)	Rs.46,000. 00
Pain and suffering	Rs.11,500.00
Transport and other charges	Rs.10,000.00
Extranourishment	Rs.15,000.00
Medical expenses	Rs.16,080.00
Loss of amenities	Rs.10,000.00
Future medical expenses	Rs.10,000.00
Total	Rs.1,18,580.00

8. Heard Mrs.N.B.Surekha, learned counsel for the appellant insurance company, Mr.P.R.Pradeep, learned counsel for R1 and Mr.T.S.Baskaran, learned counsel for R3 to R5.

9. Learned counsel for the appellant insurance company submitted that the claimants have travelled in a tyre cart attached to the tractor, which is not insured with the appellant insurance company and therefore, the appellant is not liable to pay compensation and the owner of the tractor alone is liable to pay compensation.



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10. Learned counsel for the first respondent(s)/claimants submits that the claimants travelled in the tyre cart attached with the tractor owned by the second respondent (since deceased) and insured with the appellant insurance company, however, the policy taken by the second respondent is package policy and the persons travelled in tyre cart are entitled for compensation. Hence the award of the Tribunal needs no interference of this Court.

11. Pending appeals, the owner of the tractor died and his legal representatives were brought on record. Learned counsel for respondents 3 to 5 submits that it is only between the deceased and the insurance company and not the legal heirs. Hence he prayed to dismiss the appeal.

12. The short issue that arises for consideration in the present appeals is as to whether the insurance company can be saddled with the liability. There is no dispute with regard to the fact that the claimants / injured were seated on the tyre cart attached to a Tractor. Unfortunately, the driver lost his control and the vehicle capsized and the claimants sustained grievous injuries. In the light of these admitted facts, the main



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contention that was raised was that the tyre cart was not registered with the R.T.O and the same was also not insured with the appellant insurance company.

13. The issue involved in these appeals is squarely covered by judgments of Division Bench of this Court in C.M.A. No.496 of 2021 dated 03.08.2023 (United India Insurance Co. Ltd., Vs. Lakshamma) and C.M.A. No.1893 of 2020 dated 19.07.2024 (HDFC Ergo General Insurance Co. Ltd., Vs. Bhagya Rekha and Others), wherein it has been held that the insurance company cannot be made liable in respect of unauthorised passenger and the owner of the vehicle alone is liable to pay compensation to the claimants.

14. Admittedly, the claimants were travelling in a tyre cart, which cannot be used for carrying passengers as transport vehicle. Therefore, the legal heirs of the owner of the Tractor who are respondents 3 to 5 are liable to pay the compensation to the claimants and the insurance company cannot be mulcted with liability and hence, the finding of the Tribunal to the effect that the insurance company must pay the



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compensation is liable to be interfered with by this Court and the same is hereby set-aside. The compensation fixed by the Tribunal can be claimed from the legal heirs of one Venkatachalam viz., owner of the tractor.

15. In the result, these Civil Miscellaneous appeals are allowed and the liability that was fastened against the insurance company is set-aside. Any amount that was deposited by the Insurance company shall be permitted to be withdrawn with accrued interest. The respective compensation with accrued interest shall be recovered from the legal heirs of one Venkatachalam. The legal heirs of the deceased second respondent viz., respondents 3 to 5 are directed to deposit the entire compensation amount with interest to the credit of MACTOP.Nos.825 and 1993 of 2008 on the file of Motor Accidents Claims, Tribunal Cuddalore Cum Special Subordinate Judge, Cuddalore. within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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1. Motor Accidents Claims, Tribunal Cuddalore Cum Special Subordinate Judge, Cuddalore.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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