



**C.M.A.(MD).Nos.1204 to 1206 of 2012 and
1237 of 2012**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)Nos.1204 to 1206 and 1237 of 2012

C.M.A(MD) No.1204 of 2012:

The Divisional Manager,
M/s.Oriental Insurance Company Limited,
B.O.I. Saradha Shopping Centre,
Simmakkal,
Workshop Road,
Madurai – 625 001.

... Appellant/2nd Respondent

-VS-

1. Ramayee
2. Maruthan

... Respondents 1 and 2 /Petitioners 1 and 2

3. G.Velkumar

... 3rd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree passed in M.C.O.P.No.3544 of 2002, dated 10.01.2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai.

For Appellant	: Mr.A.Ilango
For Respondents	: Ms.D.Roja Ramani – for R1
	: Died – R2



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: No appearance - R3

C.M.A(MD) No.1205 of 2012:

The Divisional Manager,
M/s. Oriental Insurance Company Limited,
Divisional Office,
Door No.16, North Veli Street,
Madurai – 625 001.

... Appellant/2nd Respondent

-vs-

1. A.Thilagam @ Ramathilagam

... 1st Respondent /Petitioner

2. G.Velkumar

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree passed in M.C.O.P.No.1262 of 2003, dated 10.01.2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai.

For Appellant

: Mr.A.Ilango

For Respondents

: Mr.M.P.Senthil – for R1

: No appearance - R2

C.M.A(MD) No.1206 of 2012:

The Branch Manager,
M/s.Oriental Insurance Company Limited,
C.B.O.I. Saradha Shopping Centre,
39/40, Simmakkal,
Workshop Road,
Madurai – 625 001.

... Appellant/2nd Respondent

-vs-



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1. Maruthamuthu
2. Minor M.Jothiraja
3. Minor M.Satheesh Kannan
4. Minor M.Sangeetha
5. Minor M.Kalaiselvi ... Respondents 1 to 5 /Petitioners 1 to 5

(Minor Respondents 2 to 5 are represented
through their father and next friend of
1st Respondent)

6. G.Velkumar ... 6th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree passed in M.C.O.P.No.3888 of 2002, dated 10.01.2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai.

For Appellant : Mr.A.Ilango

For Respondents : Mr.S.Sukumari
for R1 to R5
: No appearance – R6

C.M.A(MD) No.1237 of 2012:

The Branch Manager,
M/s. Oriental Insurance Company Limited,
C.B.O.I. Saradha Shopping Centre,
39/40, Simmakal,
Workshop Road,
Madurai – 625 001.

... Appellant/2nd Respondent



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-VS-

1. R.Chinnanan
2. Minor C.Senthil
3. Minor C.Kalidevi ... Respondents 1 to 3 /Petitioners 1 to 3
4. G.Velkumar ... 4th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree passed in M.C.O.P.No.451 of 2004, dated 10.01.2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai.

For Appellant : Mr.A.Ilango

For Respondents : Mr.S.Sukumar – for R1 to R3
: No appearance - R4

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant as against the common order passed in M.C.O.P.Nos.3544 of 2002, 1262 of 2003, 3888 of 2002 and 451 of 2004 dated 10.01.2012 on the file of the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai, wherein, the claimants in all the appeals have filed the petitions for seeking compensation before the Tribunal due to the injuries



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sustained by them in a road accident.

2. The Tribunal has awarded a sum of Rs.2,65,000/- (Rupees Two Lakhs and Sixty Five Thousand only) towards compensation in M.C.O.P.No. 3544 of 2002, a sum of Rs.2,49,000/- (Rupees Two Lakhs and Forty Nine Thousand only) towards compensation in M.C.O.P.No.1262 of 2003, a sum of Rs.4,44,000/- (Rupees Four Lakhs and Forty Four Thousand only) towards compensation in M.C.O.P.No.3888 of 2022 and a sum of Rs.4,00,000/- (Rupees Four Lakhs only) towards compensation in M.C.O.P.No.451 of 2004. As against the award passed by the Tribunal, the second respondent in the respective petitions have preferred these appeals on the ground of liability.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking before the Tribunal.

4. The brief facts of the averments made in all the petitions before the Tribunal are as follows:



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On 04.04.2002 at about 06.00 p.m, the petitioners were proceeding near Pallapatti to Pandiyarajapuram main road in a Van bearing Registration No. TN-59-E-6096 along with goods. At that time, the driver of the first respondent vehicle drove in a rash and negligent manner and the vehicle was capsized in the middle of the road. Thereby, the petitioners, namely, A.Thilagam @ Ramathilagam, Panju, Poornam and Mariyaye sustained grievous injuries. They are admitted in the hospital. The said Panju, Poornam, and Mariyaye died in the hospital due to the accident and the petitioner A.Thilagam @ Ramathilagam sustained grievous injuries and suffered permanent disability. Thereby, the petitioner and the legal heirs of the deceased persons are claiming compensation.

5.The brief averments in the counter filed by the first respondent are as follows:

These petitions are not maintainable either in law or on facts. The manner of accident is denied. The accident did not happen due to the negligence on the part of the driver of the first respondent as alleged in the claim petitions. The petitioners are put to strict proof of the injuries sustained



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by them and the legal heirs are dependants of the deceased. The first respondent vehicle was insured with the second respondent. There is no violation of condition of policy and the driver of the first respondent had valid driving licence on the date of accident. Therefore, the second respondent is liable to pay any compensation to the petitioners and the petitions are liable to be dismissed as against the first respondent.

6. The brief averments in the counter filed by the second respondent are as follows:

These petitions are not maintainable either in law or on facts and the same are liable to be dismissed. The second respondent denied the age, income and occupation of the petitioners as well as the deceased and also the manner of accident. The accident did not happen due to the negligence on the part of the driver of the first respondent. The petitioners and the deceased travelled as gratuitous passengers in a goods vehicle and thereby, there is a breach of the condition of policy. Therefore, the second respondent is in no way liable to pay compensation to the petitioners.



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7. Before the Tribunal, all the petitions were joint trial was conducted and common order was passed. On the side of the petitioners, P.W.1 to P.W.7 were examined and documents Ex.P.1 to Ex.P.18 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and document Ex.R1 was marked.

8. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.2,65,000/- (Rupees Two Lakhs and Sixty Five Thousand only) towards compensation in M.C.O.P.No. 3544 of 2002, a sum of Rs.2,49,000/- (Rupees Two Lakhs and Forty Nine Thousand only) towards compensation in M.C.O.P.No.1262 of 2003, a sum of Rs.4,44,000/- (Rupees Four Lakhs and Forty Four Thousand only) towards compensation in M.C.O.P.No.3888 of 2022 and a sum of Rs.4,00,000/- (Rupees Four Lakhs only) towards compensation in M.C.O.P.No.451 of 2004. As against the award passed by the Tribunal, the Insurance Company/second respondent has preferred these appeals on the ground of liability.

9. The learned counsel appearing for the appellant would contend that



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the first respondent vehicle was insured with the second respondent, but the first respondent vehicle is a goods vehicle, and the petitioners and the deceased travelled as gratuitous passengers along with other persons. Totally, around 40 persons travelled in the said vehicle as gratuitous passengers and thereby, there is a violation of condition of policy. Therefore, the second respondent is in no way liable to pay any compensation to the petitioners. The Tribunal, without considering the above said aspects, directed the second respondent to pay the amount by fixing liability and thereby, the order passed by the Tribunal is liable to be set aside.

10. The learned counsel appearing for the appellant has relied upon the following judgments:

1. 2018 (2) TNMAC 731 (DB) (Bharati AXA General Insurance Company Limited Vs. Aandi and two others)

2. 2008 (2) TN MAC 29 (SC) (National Insurance Company Limited Vs. Cholleti Bharatammal and others)

3. 2009 (1) TN MAC 103 (SC) (National Insurance Company Limited Vs. Rattani and others)

4. 2017 (2) TN MAC 214 (The Branch Manager, Bajaj Allianz



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General Insurance Company Limited Vs. Diwan Ali and another)

***5. 2023 ACJ 869 (Reliance General Insurance Company Limited Vs.
N.Rani and others)***

***6. 2012 (1) TN MAC 89 (DB) (Royal Sundaram Alliance General
Insurance Company Limited vs. P.Ayyakannu and another)***

***7. 2017 (2) TN MAC 243 (DB) (National Insurance Company
Limited vs. Raja and two others).***

11. The learned counsel appearing for the respondents/claimants would contend that the petitioners A.Thilagam @ Ramathilagam and Panju, travelled as loadwomen in the Van and two other persons, namely, Poornam and Mariyaye travelled as owners of the goods. As per Rule 236 of Tamil Nadu Motor Vehicle Rules, six persons were permitted in the goods vehicle. Therefore, there is no violation of policy condition. In this case, the first respondent vehicle was insured with the second respondent. The Tribunal, after taking into consideration the evidences adduced on either side, fairly came to a conclusion that the second respondent is liable to pay compensation and also the Tribunal has ordered to pay and recovery. As far as the petitioners are concerned the third parties, therefore, the Insurance Company

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is liable to pay compensation to the petitioners. Therefore, the present appeals are liable to be dismissed.

12. In support of his contention, the learned counsel appearing for the respondents has relied upon the judgment of this Court in ***C.M.A.Nos. 2241 and 2242 of 2016***, on the file of this Court.

13. This Court heard both sides and perused the materials on record. Upon hearing both sides and perusing the records, this Court frames following the points for determination in this appeal:

1. Whether the petitioners in M.C.O.P No.1262 of 2003 A.Thilagam @ Ramathilagam and other persons namely Panju, Poornam and Mariyaye travelled as gratuitous passengers and thereby any violation of condition of policy?
2. Whether the appeal in C.M.A(MD) No.1204 of 2012 is liable to be allowed or not?
3. Whether the appeal in C.M.A(MD) No.1205 of 2012 is liable to be allowed or not?
4. Whether the appeal in C.M.A(MD) No.1206 of 2012 is liable to be allowed or not?
5. Whether the appeal in C.M.A(MD) No.1232 of



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2012 is liable to be allowed or not?

Point No.1:

14. In this case, there is no dispute in respect of involvement of the vehicle in the accident. The first respondent vehicle was insured with the second respondent on the date of accident. According to the appellant, the first respondent vehicle is a goods vehicle and in the goods vehicle, more than 40 persons travelled and they sustained injuries due to accident. Thereby, there is a violation of policy condition. According to the respondents/petitioners, Thilagam @ Ramathilagam and Panju travelled as load women and Poornam and Mariyaye travelled as owner of the goods. In order to prove the case of the petitioners before the Tribunal, they examined P.W.1 to P.W.7 and documents in Exs.P.1 to P.18 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and documents Ex. R1 was marked.

15. According to the evidences on the side of the petitioners, A.Thilagam @ Ramathilagam and the deceased Panju have travelled as load



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women and the deceased Poornam and Mariyayee have travelled as owner of the goods. It is an admitted fact that, some goods were also loaded and thereby, the petitioners proved that the deceased Poornam and Mariyaye owners of the goods and Panju were load women. On the side of the respondents, the Insurance Company R.W.1 and R.W.2 were examined and deposed about the violation of condition of policy. There is no contra evidence in respect of the load women and the owner of the goods. Moreover, the petitioners' side evidence shows that the deceased Poornam and Mariyaye had travelled as owner of the goods. Panju and Thilagam @ Ramathilagam travelled as load women. The above said aspects have not been considered by the Tribunal and the Tribunal in the order held that the petitioner Thilagam @ Ramathilagam and deceased persons had travelled as gratuitous passengers. Therefore, the finding of the Tribunal to that effect is liable to be set aside.

16. As per the Rule 236 of Motor Vehicle Rules, six persons were permitted to travel in the goods vehicle. In the case on hand, according to the respondents/petitioners they travelled as owner of goods and load women. Since the policy is covered for six persons, the appellant/ second respondent



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is liable to pay compensation to the petitioners.

17. In this context, the learned counsel appearing for the appellant has relied upon the following judgments:

- 1. 2018 (2) TNMAC 731 (DB) (Bharati AXA General Insurance Company Limited Vs. Aandi and two others)***
- 2. 2008 (2) TN MAC 29 (SC) (National Insurance Company Limited Vs. Cholleti Bharatammal and others)***
- 3. 2009 (1) TN MAC 103 (SC) (National Insurance Company Limited Vs. Rattani and others)***
- 4. 2017 (2) TN MAC 214 (The Branch Manager, Bajaj Allianz General Insurance Company Limited Vs. Diwan Ali and another)***
- 5. 2023 ACJ 869 (Reliance General Insurance Company Limited Vs. N. Rani and others)***
- 6. 2012 (1) TN MAC 89 (DB) (Royal Sundaram Alliance General Insurance Company Limited vs. P. Ayyakannu and another)***
- 7. 2017 (2) TN MAC 243 (DB) (National Insurance Company Limited vs. Raja and two others).***



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18. The learned counsel appearing for the respondents also relied the judgment in ***C.M.A.Nos.2241 and 2242 of 2016*** on the file of this Court.

19. On a careful perusal of the judgments, it is clear that the Insurance Company need not pay any amount to the passengers who travelled in the goods vehicle as gratuitous passengers. As per Rule 236 of MV Act, six persons are permitted in goods carriage. In the case on hand also, four persons travelled as owner of the goods and load women. The said judgments submitted by the learned counsel appearing for the appellant are not applicable to the present facts of the case, because, in this case, the petitioners and the deceased travelled as load women and owner of goods. Apart from that, those persons and other persons have also travelled in the vehicle and thereby, there is a violation of condition of policy. Therefore, the appellant/ second respondent can pay the award amount to the petitioners and the appellant is at liberty to recover the same from the owner of the vehicle i.e, the first respondent in the claim petitions.

Point Nos.2 to 5:



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20. In this case, there is no dispute in respect of the quantum of the amount. The respondents/petitioners have not filed any appeal in respect of the quantum of the amount. The appellant/second respondent has also not disputed the quantum of the amount. The appellant/ second respondent has to pay the award amount as ordered by the Tribunal. Therefore, there is no infirmity or perversity in the orders passed by the Tribunal. Therefore this Court finds no reason to interfere with the orders passed by the Tribunal and there is no merit in these appeals and they deserve to be dismissed.

21. In the results,

(i) C.M.A(MD) No.1204 of 2012 stands dismissed and the order passed by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai, in M.C.O.P No.3544 of 2002, dated 10.01.2012, is confirmed. The appellant/ second respondent has to pay the award amount as ordered by the Tribunal. The Insurance Company already deposited the entire award amount and thereafter, the petitioners are at liberty to withdraw the same in accordance with law;



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(ii) C.M.A(MD) No.1205 of 2012 stands dismissed and the order passed by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai, in M.C.O.P No.1262 of 2003, dated 10.01.2012, is confirmed. The appellant/ second respondent has to pay the award amount as ordered by the Tribunal. The Insurance Company already deposited the entire award amount and thereafter, the petitioner is at liberty to withdraw the same in accordance with law;

(iii) C.M.A(MD) No.1206 of 2012 stands dismissed and the order passed by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai, in M.C.O.P No.3888 of 2002, dated 10.01.2012, is confirmed. The appellant/ second respondent has to pay the award amount as ordered by the Tribunal. The Insurance Company already deposited the entire award amount. On deposit of the said amount by the second respondent, the petitioners 1 to 5 are at liberty to withdraw the same by filing appropriate application before the Tribunal. In respect of the minor claimants/respondents 2 to 5, the amount shall be deposited in a Nationalized



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Bank till they attain majority or 3 years whichever is earlier and the guardian of the minor claimant is permitted to withdraw the interest once in three months; and

(iv) C.M.A(MD) No.1237 of 2012 stands dismissed and the order passed by the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, (PCR) Madurai, in M.C.O.P No.451 of 2004, dated 10.01.2012 is confirmed. The appellant/second respondent has to pay the award amount as ordered by the Tribunal. The Insurance Company already deposited the entire award amount. On deposit of the said amount by the second respondent, the petitioners 1 to 3 are at liberty to withdraw the same by filing appropriate application before the Tribunal. In respect of the minor claimants/respondents 2 and 3, the amount shall be deposited in a Nationalized Bank till they attain majority or 3 years whichever is earlier and the guardian of the minor claimant is permitted to withdraw the interest once in three months. There shall be no order as to costs.

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NCC : Yes/No

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Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
III Additional District and Sessions Judge,
(PCR) Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

P.DHANABAL,J.

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