



CMA(MD).Nos.447 & 406 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.06.2024

Pronounced on : 28.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.447 & 406 of 2020

C.M.A(MD) No.447 of 2020

M/s.National Insurance Co.Ltd.,
TP Hub, Divisional Office II
Aruvi Block
St.Paul's Complex
Cantonment
Trichy

... Appellant/ Respondent No.2

-VS-

1.Santhiyagu

2.Pilominal

3.John Peter

4.Fathimarani

5.Rubidas

...Respondent Nos.1 to 5/Petitioners

6.Venkatraman

...Respondent No.6/Respondent No.2



CMA(MD).Nos.447 & 406 of 2020

CMA(MD).No.406 of 2020:

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M/s.National Insurance Co.Ltd.,
TP Hub, Divisional Office II
Aruvi Block
St.Paul's Complex
Cantonement
Trichy

...Appellant/Respondent No.2

Vs

1.Arokiaammal

2.Leojones

3.Christine Mala

4.Arogya Thomas

5.Lourde Mary

...Respondent Nos.1 to 5/Petitioners

6.Venkatraman

...Respondent No.6/Respondent No.2

Prayer in CMA(MD).No.447 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act,1988 to set aside the judgment and decree dated 10.01.2020 made in MCOP.No.395 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai.

Prayer in CMA(MD).No.406 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act,1988, to set aside the judgment and decree dated 10.01.2020 made in MCOP.No.396 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai.



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CMA(MD).Nos.447 & 406 of 2020

For Appellant : M/s.P.Malini
in both the appeals

For Respondents : No appearance

COMMON JUDGMENT

These two appeals have been filed by the Insurance Company challenging the award passed in MCOP.Nos.395 & 396 of 2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai primarily on the ground of liability.

2.A perusal of the averments in both the claim petitions reveal that both the deceased persons have travelled in a goods vehicle belonging to the first respondent and insured with the second respondent on 02.09.2014. Due to rash and negligent driving of the driver, the Van got capsized and both of them have succumbed to the injuries. According to the claimants, both the deceased persons were vegetable vendors and they were earning a sum of Rs.10,000/- per month. They further claimed that they were travelling in a goods vehicle along with vegetable load as owners of the goods. Hence, they have prayed for payment of compensation of Rs.20/- lakhs each.

3.The Insurance Company had filed a counter contending that many persons have travelled in the goods vehicle as unauthorized passengers and



CMA(MD).Nos.447 & 406 of 2020

due to overload, the Van had got capsized. Therefore, they are not liable to pay compensation. The Insurance Company had further questioned the quantum of award prayed for by the claimants.

4.The Tribunal after considering the oral and documentary evidence, has arrived at a finding that both the deceased persons have travelled in the goods vehicle only as owner of the goods and therefore, they are entitled to receive compensation from the insurance company. The Tribunal had fixed the total compensation at Rs.7,93,400/- for the claimants in MCOP.No.395 of 2014 and Rs.10,47,296/- for the claimants in MCOP.No.396 of 2014. Challenging the said award, the present appeals have been filed.

5.According to the learned counsel for the appellant/insurance company, several persons have travelled in the goods vehicle at the time of the accident. There is no proof to show that they have travelled as owners of the goods along with vegetable load. Therefore, they are unauthorized passengers in a goods vehicle. Even assuming that they had travelled as owners of the goods, they could travel only within the cabin area and not in the loading area. Therefore, the Insurance Company is not liable to pay compensation. Hence, they prayed for allowing the appeal and to exonerate the insurance company.



CMA(MD).Nos.447 & 406 of 2020

6.Per contra, the learned counsel appearing for the claimants had contended that the deceased persons have travelled as owner of the goods.

There is no absolute bar for travelling in the loading area of the goods vehicle, if they are owners of the goods or authorized representative of the owners of the goods. The policy covers the owner of the goods also. Hence, he prayed for sustaining the liability as well as the quantum fixed by the Tribunal.

7.I have considered the submissions made on either side and perused the material records.

8.It is the case of the claimants that the deceased persons have travelled in the goods vehicle as owners of the goods along with vegetable load. The accident has happened at about 2.00 p.m on 22.09.2014 and an F.I.R has been lodged at 6.00 a.m on 23.09.2014 which is marked as Exhibit P1. A perusal of the F.I.R reveals that the deceased persons along with others have carried their vegetable load for hire at the time of accident. PW2 who is the ocular witness has specifically deposed that the deceased persons had travelled in the goods vehicle as owners of the vegetable load. The suggestion put to him by the Insurance Company during the cross examination that there was no vegetable load in the vehicle at the time of accident was answered in negative by the deponent. The Assistant Manager of the Insurance Company has been examined as RW1. In paragraph No.3 of his proof affidavit, he has



CMA(MD).Nos.447 & 406 of 2020

specifically stated that the deceased persons have travelled in the goods vehicle for doing business in Viralimalai vegetable market. Therefore, it is clear that both the deceased persons have travelled in the goods vehicle only as owners of the goods and not as unauthorized passengers.

9.The learned counsel appearing for the appellant had contended that the deceased persons having travelled in the loading area, are not entitled to receive any compensation. A perusal of Rule 238 of Tamil Nadu Motor Vehicle Rules indicate that there is a prohibition to carry persons in a goods carriage in such a manner that while he is in a sitting position, is at a height exceeding 300 centimeters from the surface upon which the vehicle rests. Therefore, it is clear that there is no absolute prohibition in the travelling of owner of the goods in the loading area. The only condition is that in the sitting position that should not exceed 300 c.m from the road surface. Therefore, such a contention raised on the side of the insurance company seeking to exonerate them from the liability is not legally sustainable.

10.A perusal of the award indicates that the deceased persons were aged 51 and 52 years and they were vegetable vendors. The accident has taken place in the year 2014, the Tribunal had fixed the notional income at Rs.6000/- and has deducted 1/4th towards personal expenses. After applying



CMA(MD).Nos.447 & 406 of 2020

proper multiplier, the final quantum of award has been reached by the Tribunal. This Court does not find any reason to interfere with the quantum of award.

11.In view of the above said deliberations, there are no merits in the appeals. Both the Civil Miscellaneous Appeals stand dismissed. No costs.

28.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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CMA(MD).Nos.447 & 406 of 2020

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To

1. The Motor Accident Claims Tribunal
/ Subordinate Judge, Kulithalai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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CMA(MD).Nos.447 & 406 of 2020

R.VIJAYAKUMAR,J.

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C.M.A(MD)Nos.447 & 406 of 2020

28.06.2024