IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 1397 of 2025
AND
CMP NO. 11774 OF 2025

1. Usha Nandhini
W/o.Murugesan, No.47C,
Achamangalam Village and Post,
Bargur Taluk, Krisnagiri District

Appellant(s)

Vs

1. AMBIKA
w/o.Late Maniyarasu, res at No.5/97,
Gandhi Nagar Colony, Thimmapuram
Post, Krishnagiri Tk and Dist.

2.Minor Mithran
S/o.Late Maniyarasu, (minor rep. by his
Next friend/Guardian/mother/Ambika)
res at No.5/97, Gandhi Nagar Colony,
Thimmapuram Post, Krishnagiri Tk and
Dist.

3.Somu @ Annamalai
S/o.Muniyappan, D.No.142, Mittapalli
Village, Balinayanapalli Post,
Krishnagiri Dist.

4.National Insurance Co. Ltd.
Rep.by its Branch Manager, Branch
office at Anuradha Complex, 3rd Floor,
NO.333, Opposite to Raja Theatre,
Bangalore Road, Krishnagiri-635001

Respondent(s)

CMA No. 1397 of 2025

PRAYER

To fix the entire liability on 4th respondents made in order dated 13.08.2024 made in M.C.O.P.No.1066 of 2021 on the file of the MACT Tribunal,Special District Court, Krishnagiri by allowing this Civil Miscellaneous Appeal and thus render justice.

CMA No. 1397 of 2025

For Appellant(s): S.P.Yuaraj

For Respondent(s): M/s. C. Prabakaran For Rr1 To 3
M/s. D. Baskaran For R4

JUDGEMENT

This Civil Miscellaneous Appeal has been filed to fix the entire liability on 4th respondents made in order dated 13.08.2024 made in M.C.O.P.No.1066 of 2021 on the file of the MACT Tribunal,Special District Court, Krishnagiri(in short "tribunal"). Challenging the award passed by the tribunal owner of the vehicle filed this appeal.

2. The learned counsel for the appellant submits that the Tribunal has erroneously fixed entire liability upon the appellant/owner of the vehicle stating that there was a gross violation of the policy condition though the vehicle was insured at the time of the accident. Further, he submits that the tribunal has failed to consider the fact that at the time of the accident, only three persons were travelling in the lorry to substantiate the same the appellant examined the driver of the lorry as RW1, who testified that only three persons were travelling in the lorry. But, the tribunal has erroneously concluded that five persons were travelling in the lorry at the time of the accident and the appellant is solely liable for the compensation. Further, he submits that appellant paid premium for workmen also, therefore the insurance company is liable to pay compensation. However, the tribunal fixed entire liability on the appellant which is erroneous. Further, the respondent has not examined any independent witness to substantiate the claim that five persons were travelling in the lorry. Further, the tribunal has erroneously held that the driver of the lorry did not possessed valid

driving license to operate a vehicle with gross weight of 11,900 kgs, but as per the Judgement reported in 2024(2) TNMAC 561(SC), it was held that a driver holding LMV license with GVW of less than 7500 kg is authorised to operate a transport vehicle without requiring additional authorisation under Section 10(2)(e). Hence, he prays to fix entire liability upon the fourth respondent/Insurance company.

3. The learned counsel for the fourth respondent/Insurance Company submits that at the time of the accident the driver of the lorry possessed driving licence only for Light Motor Vehicle and not for heavy vehicles. Furthermore, the vehicle was overloaded with five persons including the driver. As per the policy three persons were covered. Besides, the deceased was sit on body of the lorry thereby he violated the policy conditions which was rightly appreciated by the tribunal needs no interference. Hence, he prayed to dismiss the appeal.

4. By way of reply, the learned counsel for the appellant submits that at the time of the accident, lorry was loaded with only unladen weight with vehicle entire goods weight of about 4333 kgs but his own report shows that entire weight is 11,990 kgs. Admittedly, granite stone was carrying in that lorry at 11.55 p.m on 17.03.2021, when the deceased was travelling in the lorry belongs to the appellant the lorry was capsized due to the rash and negligent driving of the lorry driver. Thereby, the accident was happened.

5. The learned counsel for the appellant submits that as load man deceased was travelled in the lorry after loading granite stone, the accident was happened when they were about to go to destination hence they are covered under insurance policy but the learned counsel for the insurance company submits that they are not specifically mentioned that deceased was load man at the time of filing the petition.

6. On perusal of the FIR, it reveals that after loading the granite stone as load man/deceased along with others travelled in the lorry this aspect was properly appreciated by the tribunal. Considering the fact that the deceased was

load man of the vehicle therefore he was covered under the policy. However, there is gross violation of policy condition, at time of the accident the driver possessed only LMV licence but he did not possessed necessary licence to operate heavy vehicle with gross weight of 11,990 kgs. Therefore, there is violation of the policy condition on the side of the appellant. Further, the deceased was happened to be a load man covered under the policy. Therefore, this Court inclined to modify the order passed by the tribunal by confirming the award and the fourth respondent/Insurance Company is directed to pay the compensation to the claimants and recover the same from the appellant under the pay and recovery principle. Except above modification, the award passed by the tribunal remain unchanged. Furthermore, the learned counsel for the fourth respondent pointed out that some security order may be granted to save the insurance company in future to recover the amount from the appellant to that effect he relied the judgement in the case of Appeal (Civil) No. 1012 of 2004 in Oriental Insurance Company Limited Vs. Shri Nanjappan and others. As per the ratio laid down in the above case Insurance Company needs some security. Therefore, the appellant is directed to furnish the security for the entire amount which the insurer will pay to the claimants or appellant shall give undertaking that she would not transfer the vehicle till completion of recovery proceedings. The appellant is directed to file undertaking affidavit within a period of Eight weeks from the date of receipt of a copy of this judgment.

7. In the result, this civil Miscellaneous Appeal is disposed of. No Costs. Pending petition(s), if any, is/are closed.

11-06-2025

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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6. The section officer, V.R section, High
Court, Madras.

T.V.THAMILSELVI J.

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