



CMA.Nos.1918 to 1922 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.Nos.1918 to 1922 of 2018

and

C.M.P.Nos.14836 to 14840 of 2018

New India Assurance Co.Ltd.,
No.91/106, 1st Floor, Big Street,
Tiruvannamalai.

...Appellant in all CMA's

Vs.

1. K.Srinivasan ...1st Respondent in C.M.A.No.1918 of 2018
2. Thirupathy ...1st Respondent in C.M.A.No.1919 of 2018
3. Annadurai
4. Radha ...1st and 2nd respondents in C.M.A.No.1920 of 2018
5. Manikandan ...1st Respondent in C.M.A.No.1921 of 2018
6. Shanmugam
7. Kaveri ...1st and 2nd respondents in C.M.A.No.1922 of 2018
8. M.Srinivasan
9. Royal Sundaram Alliance Insurance Co.Ltd.,
No.45 &46, Whites Road,
Chennai – 2.
10. G.Kali ...Respondents 3 to 5 in C.M.A.Nos.1920 & 1922 of
2018 and Respondents 2 to 4 in C.M.A.Nos.1918,
1919 & 1921 of 2018



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Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the decrees and judgments dated 12.06.2014 made in M.C.O.P.Nos.804, 805 1124, 1331 and 1332 of 2013, on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

For Appellants : Mrs.R.Sreevidhya (in all W.P.'s)

For Respondents : Mr.S.L.Sudarsanam for R1 in all W.P.s & for R2 in C.M.A.Nos.1920 and 1922 of 2018

No appearance for R2 and R4 in
C.M.A.Nos.1918, 1919 and 1921 of 2018

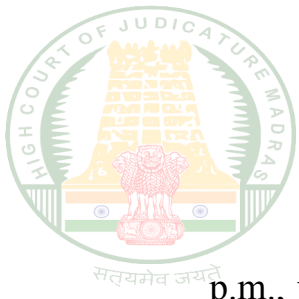
No appearance for R3 and R5 in
C.M.A.Nos.1920 and 1922 of 2018

Mr.G.Vasudevan for R3 in C.M.A.Nos.1918,
1919 & 1921 of 2018 & for R4 in
C.M.A.Nos.1920 & 1922 of 2018

COMMON JUDGMENT

Challenging the decree and judgment dated 12.06.2014 made in M.C.O.P.Nos.804, 805 1124, 1331 and 1332 of 2013, on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur, the appellant / insurance company have filed the respective appeals.

2. It is the case of the claimants that, on 25.06.2009 at about 2.30



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p.m., when the deceased Thennarasu and Mukkesh were travelling along with the injured claimants in M.C.O.P.Nos.804, 805 and 1331 of 2013 during the course of their employment in a mini lorry bearing Regn.No.TN 34 D 2922, at that time a heavy Goods lorry bearing Regn.No.KA 01 B 3812 driven by its driver in a rash and negligent manner, dashed the rear side of the mini lorry in which the deceased and the injured persons were travelling, due to which, the deceased persons sustained grievous injuries and died on spot and the injured were admitted in the hospital. Thereby, the injured persons have filed their respective claim petitions in M.C.O.P.Nos.804, 805 and 1331 of 2013 and the dependents of the deceased Thennarasu and Mukesh have filed their respective claim petitions in M.C.O.P.Nos.1332 and 1124 of 2013 claiming compensation under various heads.

3. Before the Tribunal, the claimants examined P.W.1 to P.W.6 and marked Exhibits P.1 to P.34 and on the side of the appellant / insurer of the mini lorry, they examined R.W.1 to R.W.3 and marked Exs.R1 to R3. After trial, the Tribunal, on appreciation of oral and documentary evidence, awarded Rs.3,75,000/-, Rs.5,26,000/-, Rs.2,63,000/-,

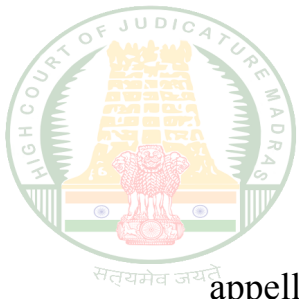


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Rs.1,89,100/- and Rs.1,29,200/- towards compensation for the death of the deceased Thennarasu and Mukesh in M.C.O.P.Nos.1332 and 1124 of 2013 and injured claimants in M.C.O.P.Nos.804, 805 and 1331 of 2013 respectively and directed the insurer of the mini lorry to pay the entire compensation and thereafter, to recover the same from the owner of the mini lorry namely one Kali. Challenging the same, the appellant/insurer of the mini lorry has come up with these appeals.

4. Learned counsel for the appellant / insurer of the mini lorry submitted that though the above said accident happened solely due to the rash and negligent driving on the part of the driver of the goods carrier, however, the Tribunal, on the basis of the F.I.R. which was registered based on the erroneous complaint given by one of the unauthorised passenger of the mini lorry had come to a conclusion that the accident had happened solely due to the rash and negligent driving of the driver of the mini lorry. Though the informant of the F.I.R. has not been examined as witness before the Tribunal, however, the Tribunal has attributed entire liability on the appellant / insurance company on the basis of Ex.P.1, F.I.R which is wholly unsustainable. Moreso, an officer attached to the



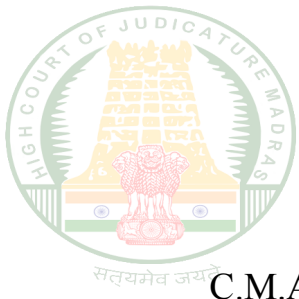
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appellant Insurance company namely one Sampath was examined as R.W.3 and in his evidence has stated that the mini lorry bearing Regn.No.TN 34 D 2922, which was insured with the appellant insurance company has violated permit rules by allowing 40 unauthorised passengers including the injured and the deceased persons in respective C.M.A's to travel in the mini lorry at the time of accident. Hence, the appellant insurance company is not liable to indemnify the injured and the dependents of the deceased and without considering the same, the Tribunal has fastened the entire liability as against the appellant / insurer of the mini lorry which is wholly unsustainable.

5. Per contra, the learned counsel appearing on behalf of the respective claimants contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any interference. Accordingly, she prays for dismissal of the appeals.

6. The learned counsel appearing on behalf of the fourth respondent in C.M.A.Nos.1920 & 1922 of 2018 and third respondent in



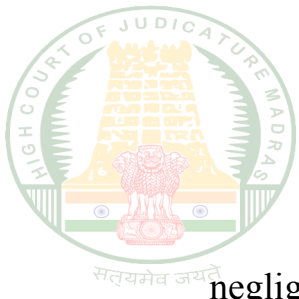
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C.M.A.Nos.1918, 1919 & 1921 of 2018 / insurer of the goods carrier contended that the contents of the F.I.R. clearly indicates that the accident had happened solely due to the rash and negligent driving on the part of the driver of the mini lorry. Upon appreciating the oral and documentary evidence the Tribunal has awarded the aforesaid sum to the respective claimants payable by the insurer of the mini lorry and thereafter, to recover the same from the owner of the mini lorry which does not require any interference.

7. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Admittedly, the respective claimants have filed their respective claim petitions stating that the injured and the deceased persons were employed as loading and unloading coolie and cleaner under one Kali / owner of the mini lorry. The main grievance of the appellant / insurer of the mini lorry is that the accident had happened solely due to the rash and

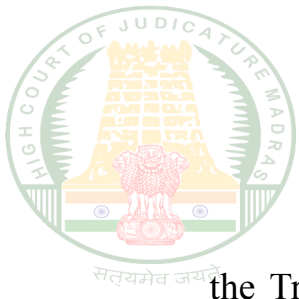


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negligent driving of the driver of the goods carrier and the Tribunal without considering the said aspect, had fastened the entire negligence as against the driver of the mini lorry on the basis of the complaint given by one of the unauthorized passengers of the mini lorry that the injured and the deceased persons travelled as unauthorized passengers, the F.I.R. has been registered as against the driver of the mini lorry. They also contended that, the informant of the F.I.R. has also not been examined as eye witness before the Tribunal.

9. It is to be pointed out that the FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further, FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Hence, this Court is inclined to fasten 50% liability on the part of the insurer of the mini lorry / appellant and another 50% liability on the part of the insurer of the goods carrier / Royal Sundaram Alliance Insurance Co.Ltd by modifying the award passed by the Tribunal. Insofar as the quantum of compensation is concerned, the same are just and reasonable, therefore, this Court is not venturing into the same. Though



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the Tribunal has ordered the appellant / insurance company to pay and recover the amount from the owner of the mini lorry Kali, neither the victim / claimants nor the owner of the vehicle has appeared before this Court to challenge that said portion of the order. In such circumstances, this Court is not inclined to enter into whether the deceased / injured are unauthorized passengers or not and the order of the Tribunal granting pay and recovery is confirmed. Since, this Court has fastened 50% : 50% liability on the appellant insurance company as well as the Royal Sundaram Alliance Insurance Co.Ltd, both the insurance companies are directed to pay and recover the respective compensation from their respective owners.

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified with a direction to the appellant insurance company and Royal Sundaram Alliance Insurance Co.Ltd to deposit 50% : 50% of the respective compensation fixed by the Tribunal for the respective dependents of the deceased and injured claimants to the credit of respective M.C.O.P.Nos.804, 805 1124, 1331 and 1332 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition



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till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter as per the apportionment made by the Tribunal below. No costs. Consequently, connected miscellaneous petitions are closed.

08.01.2025

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

1. Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.
2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI, J.



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