



C.M.A(MD)No.1191 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.10.2025

Pronounced on : 05.11.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.1191 of 2012

and

M.P.(MD)No.3 of 2012

The Branch Manager,

The New India Assurance Company Limited,

Dindigul Main Road.

... Appellant/ 4th Respondent

Vs.

1.T.Selvam

2.Kavitha

...Respondents 1 & 2 / Petitioners

3.S.Ramesh

...3rd Respondent / 1st Respondent

4.The Principal

Mount Geon Matriculation School,

Society Colony, Batlagundu,

Nilakkottai Taluk, Dindigul District.

5.The Correspondent,

Gandhi Primary School,

Eariyoor, Thirupathur Taluk,

Thanjavur Town and Munsif. ...Respondents 4 & 5/Respondents 2 & 3



C.M.A(MD)No.1191 of 2012

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 01.07.2011 made in M.C.O.P.No.109 of 2004 on the file of the Principal Subordinate Court, Motor Accident Claims Tribunal, Devakottai, and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.D.Sivaraman

For Respondents : Mr.T.Selvakumaran – for R1
Mr.S.Vijayakumar – for R2
given up – R3
ex parte – R4 & R5

JUDGMENT

The appellant/4th respondent Insurance company has filed this Civil Miscellaneous Appeal against the fair and decretal order dated 01.07.2011 made in M.C.O.P.No.109 of 2004 by the learned Principal Subordinate Judge, Motor Accident Claims Tribunal, Devakottai.

2.The brief case of the claimants is as follows:-

(i) On 29.03.2004, Sangeetha, a child was returning from her school in a Van bearing Registration No.TN 72 A 7216. When the



C.M.A(MD)No.1191 of 2012

was not operated under a valid route. Hence, the fourth respondent is not liable to pay compensation and further contended that the claim made by the petitioners is highly excessive and prayed for dismissal of the petition.

4. During trial, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P5 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Exs. R1 and R2 were marked.

5. Upon consideration of the materials available on record, both oral and documentary, the Tribunal awarded a sum of Rs.4,45,500/- and directed the fourth respondent to pay the award amount along with interest @ 6% pa from the date of petition till the rate of realisation.

6. Aggrieved by the said award, the Insurance Company is before this Court on the ground of fastening liability upon them by contending that there is no privity of contract between the 5th respondent herein, since the policy stands in the name of the 4th respondent herein. Therefore, the Insurance Company cannot be saddled with the liability. It is further contended that as the vehicle being operated in violation of



C.M.A(MD)No.1191 of 2012

policy condition, the insurer cannot be held responsible for payment of compensation.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Now, this Court has to decide the following point for consideration:-

(1) whether the order passed by the Tribunal is proper or liable to be set aside ?

9. Point :

The contention of the learned counsel for the appellant is that there is no privity of contract between the fifth respondent herein viz., The Correspondent, Gandhi Primary School and the appellant. The insurance policy stands in the name of fourth respondent, namely, The Principal, Mount Geon Matriculation School, Batlagundu. Therefore, the appellant cannot be mulcted with liability nor can the liability of the fifth respondent to be shifted upon the appellant. It is further contended that the vehicle bearing Registration No.TN 72A 7216 was being operated in violation of permit condition and therefore, the Tribunal ought to have



C.M.A(MD)No.1191 of 2012

exonerated the insurer from any liability.

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10. Further, the Tribunal failed to note that no income can be fixed for an infant aged about 3 years and therefore, no compensation can be awarded under the head of loss of income as the fixation of income would be purely speculative. Hence, the award of Rs.2,40,000/- for loss of income is liable to be set aside. It was further contended that the award under the head of loss of love and affection and mental agony are highly excessive and improper and hence, liable to be set aside.

11. On perusal of records, it is found that the respondents 4 and 5 did not appear and contested the case either before the trial Court or before the appellate Court. Ex.R1 is the policy issued by the appellant in favour of the fourth respondent, the Principal, Mount Geon Matriculation School, Society Colony, Batlagundu in respect of the offending vehicle bearing Registration No.TN 72A 7216 for the period from 14.11.2003 to 13.11.2004. The accident occurred on 29.03.2004 and on that day, the policy was in force. RW1, Junior Assistant of Regional Transport Authority also admitted that the permit granted to the above vehicle from 29.10.2001 to 22.10.2006, to Mount Geon



C.M.A(MD)No.1191 of 2012

Matriculation, School and as per the permit condition, the vehicle was permitted to carry school students only within 30 kms., from the school.

Though the permit was in force at the time of accident, but it was found that the vehicle carrying children beyond the permitted limit.

12. As per the evidence of PW1, the school van belongs to the 5th respondent. No doubt there was a breach of permit condition, but such breach does not absolve the insurance company from paying the compensation to third party. Therefore, the insurer is entitled to recover the amount from the vehicle owner for violation of permit condition. Therefore, the appellant shall pay first the compensation to the claimants and recover the same from the owner of the vehicle. Since the vehicle stood in the name of the fourth respondent and he has not come forward to produce any document to show that the vehicle was sold to the fifth respondent and hence, the liability remains upon him. The appellant/insurance company can claim compensation against the fourth respondent and recover the same. The fifth respondent is exonerated from his liability.

13. As far as the award granted by the Tribunal is concerned,



C.M.A(MD)No.1191 of 2012

for non-earning minor child, no actual income can be proved. Therefore, only notional income can be adopted. This Court is of the view that the compensation awarded by the Tribunal is just compensation, considering that the claimants, lost their only female child in an unfortunate accident, accordingly, this Court is of the opinion that the award passed by the Tribunal is proper and does not warrant any interference.

14. In view of the forgoing discussion, the Civil Miscellaneous Appeal is slightly modified and The fifth respondent is exonerated from his liability. The point is answered accordingly.

15. In such view of the matter, this Civil Miscellaneous Appeal is slightly modified and the appellant insurance company is directed to deposit the award amount with accrued interest at the rate of 7.5% per annum and costs, from the date of claim petition till the date of realization, at the first instance, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the fourth respondent/owner of the vehicle in accordance with the law. On such deposit being made, the claimants are permitted to withdraw their entire



C.M.A(MD)No.1191 of 2012

share amount by filing formal application before the Tribunal. No costs.

Consequently, connected Miscellaneous Petition is closed.

05.11.2025

Index : Yes / No

NCC : Yes / No

RM

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Devakottai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1191 of 2012

R.POORNIMA, J.

RM

Judgment in

C.M.A.(MD)No.1191 of 2012

05.11.2025