

C.M.A(MD)Nos.751 and 752 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.06.2025

PRONOUNCED ON:04.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)Nos.751 and 752 of 2024

and

C.M.P.(MD)Nos.8289 and 8291 of 2024

C.M.A.(MD)No.751 of 2024:

The Branch Manager,
M/s Sriram General Insurance Company
Limited,
RIICO E8, Intercial Area,
Sittapuram, Jaipur,
Rajasthan.

: Appellant / Respondent No.2

Vs.

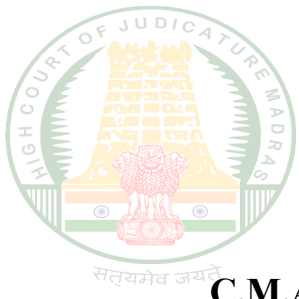
1.S.Pandiselvam

: Respondent No.1 / Petitioner

2.C.Murugan

: Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award and decree dated 19.09.2019, passed in M.C.O.P.No.485 of 2014, on the file of the Special Subordinate Judge (Motor Accidents Claims Tribunal) of Madurai insofar as liability to pay compensation is concerned.



C.M.A(MD)Nos.751 and 752 of 2024

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The Branch Manager,
M/s Sriram General Insurance Company
Limited,
RIICO E8, Intercial Area,
Sittapuram, Jaipur,
Rajasthan.

: Appellant / Respondent No.2

Vs.

1.V.Muthiahya

: Respondent No.1 / Petitioner

2.C.Murugan

: Respondent No.2/Respondent No.1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the award and decree dated 19.09.2019, passed in M.C.O.P.No.486 of 2014, on the file of the Special Subordinate Judge (Motor Accidents Claims Tribunal) of Madurai insofar as liability to pay compensation is concerned.

For Appellant
(in both cases) : Mr.V.Sakthivel

For Respondents
(in both cases) :Mr.R.Suriyanarayanan
for R.1
: No Appearance for R.2



C.M.A(MD)Nos.751 and 752 of 2024

COMMON JUDGMENT

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These Civil Miscellaneous Appeals are directed against the common order passed in M.C.O.P.Nos.485 and 486 of 2014, dated 19.09.2019, on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court for MCOP cases, Madurai.

2. The appellant/Insurer who was mulcted with liability to pay compensation of Rs.3,30,000/- with interest and costs to the claimant in M.C.O.P.No.485 of 2014 and Rs.1,38,000/- with interest and costs to the claimant in M.C.O.P.No.486 of 2014 for the disability suffered by them consequent to an accident occurred on 28.10.2013, challenged the liability mulcted on it.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original petition.

4. During enquiry, the evidence came to be recorded in M.C.O.P.No.485 of 2014. The claimants have examined themselves as



C.M.A(MD)Nos.751 and 752 of 2024

P.W.1 and P.W.2 respectively and examined one Ramasamy as P.W.3 and exhibited 23 documents as Exs.P.1 to P.23. The first respondent remained exparte. The second respondent/Insurer examined its Legal Officer as R.W.1 and exhibited the copy of the Insurance Policy as Ex.R.1 and three disability certificates came to be marked as Exs.C.1 to C.3. The learned trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides, passed a common order dated 19.09.2019 holding that the first respondent's driver was responsible for the accident, directing the second respondent Insurer to pay compensation to both the claimants as mentioned above. Aggrieved by the impugned order, the Insurer has preferred the present two Civil Miscellaneous Appeals.

5. The claimants alleged that on October 28, 2013, Singaram, his son Pandiselvan, and Muthiah hired a TATA 407 van (TN-63-6667) from the first respondent to attend the Melapalayam weekly cattle market in Tirunelveli District. While traveling on Madurai to Tuticorin NH-45B road near Tharaganendhal Vilakku at around 7:30 a.m., the van's right rear wheel burst due to the driver's rash and negligent driving, causing the van to capsize. The claimants sustained injuries and received



treatment at Government Hospital, Kariyapatti, and were later referred to Government Rajaji Hospital, Madurai. They attributed the accident to the driver's negligence and claimed that the van's owner (first respondent) and insurer (second respondent) are liable for compensation.

6. The main defence of the second respondent is that the claimants and many more persons travelled in the said vehicle as unauthorised passengers, that the said vehicle was permitted to transport goods and not passengers, that there were no goods taken in the vehicle at the time of accident and that since the owner of the vehicle has used the vehicle against the provisions of the Motor Vehicles Act and Rules, the second respondent – Insurer cannot be made liable.

7. The learned Counsel for the appellant/Insurer would submit that the Tribunal failed to note that the claimants were travelling in the said vehicle as unauthorised passengers, that the Tribunal also failed to notice that there were no goods in the said vehicle at the time of accident and as such, the claimants were not travelling as owners of the goods, that though the claimants have alleged that they have proceeded to Tirunelveli for the purchase of buffaloes, the claimants have not



C.M.A(MD)Nos.751 and 752 of 2024

produced any evidence to substantiate their claim and that since the claimants were unauthorised passengers of the said vehicle and not as the owner of the goods, no liability can be fastened on the Insurer.

8. The learned counsel for claimants would submit that under Section 147 of the Motor Vehicles Act, the insurance company is liable for death or injury to the owner of goods or their authorized representative traveling in the vehicle with goods. Although the claimants Singaram, P.W.1, and P.W.2 stated they engaged the van to purchase cattle at Melapalayam weekly cattle market in Tirunelveli, and the accident occurred en route, the vehicle was not carrying goods at the time. However, the learned counsel would contend that since the vehicle was proceeding to fetch the goods for transportation, the risk coverage extends to the passengers, who were neither gratuitous nor fare-paying passengers.

9. The learned Counsel for the claimants would rely on the decision of the Karnataka High Court in the case of ***National Insurance Company Limited Vs. Sarojamma and Others*** reported in ***2007 SCC Online Kar 394*** and the relevant passages are extracted hereunder:



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C.M.A(MD)Nos.751 and 752 of 2024

“11. By the reading of Section 147 of the Act, it is clear that if there is death or fatal injury to any person including owner of the goods or his authorised representative carried in the vehicle, the liability of the insurance company is covered, provided the owner of the goods or his authorized representative is travelling in the goods vehicle along with goods. Therefore, short question that arises for our consideration is if a person dies in an accident while travelling in the vehicle before goods were actually loaded or under transportation and if such person was travelling only to secure goods for transportation, whether the risk of such person is covered under the policy?

12. In the instant case, it is the specific case of the claimants that deceased Kalaiah by hiring the vehicle in question was travelling in the vehicle in order to bring vegetables to his shop from a village and the evidence of PW-1 clearly reveals that her husband was travelling in the goods vehicle only to secure vegetables to his shop. The evidence of PW-1 or the pleadings of the claimants are not challenged by the insurance company. In other words, hiring of the vehicle by the deceased for transportation of vegetables only and that the deceased was travelling in the goods vehicle, in order to transport the vegetables and that he was not travelling as a gratuitous passenger or a fair-paid passenger. Ex. R-1 insurance policy covers the risk of a person who was travelling either as a owner of the goods or an authorised representative of the owner of the goods.



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C.M.A(MD)Nos.751 and 752 of 2024



Admittedly, deceased was not travelling in the vehicle as a fair-paid passenger or a gratuitous passenger. The accident has occurred before reaching the destination to load the goods during the course of such journey. When a person by hiring the vehicle was proceeding to the place of goods with an intention to bring those goods back to Bangalore, if such vehicle met with an accident, it has to be deemed that the vehicle was hired by the deceased only for transporting the goods and that he was travelling in the goods vehicle for the purpose of transportation of his goods. Therefore, it is clear that even though goods were not in the vehicle when the vehicle met with an accident since vehicle was proceeding to reach the place of goods for the purpose of transportation, we have to hold that the risk of such passenger covered as he was neither a gratuitous passenger or a fair-paid passenger.”

10. The learned Counsel would also rely on the decision of the Delhi High Court in ***Oriental Insurance Company Ltd., Vs. Hazara and others*** reported in ***2011 SCC Online Del 4158*** and the relevant passage is extracted hereunder:

“5. A reading of Section 147 of the Motor Vehicle Act in fact clearly shows that if the death or injury has occurred to any person including the owner of the goods or his authorized representative in the vehicle, insurance company is liable.



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C.M.A(MD)Nos.751 and 752 of 2024



Evidence in the present case shows that the accident had occurred before the victim could reach the destination point to purchase their buffaloes. The vehicle had been hired by them only for transporting the goods and they were travelling in this vehicle for this purpose which was the transportation of their goods; even though the goods were not in the vehicle when the vehicle met with the accident but the vehicle was proceeding to reach the place of its destination, in such a scenario it cannot be said that the victims were gratuitous or paid passengers. The vehicle i.e. the cantor had been hired by them only this purpose; in such a situation if their vehicle had met with an accident, it had to be deemed that the goods were with them. It is thus clear that the finding of the learned Tribunal on this count suffers from no infirmity. Appeals of the insurance company are accordingly dismissed.”

11. In order to counter the arguments made by the claimants side, the learned Counsel for the appellant/Insurer would rely on the judgment of this Court in ***Reliance General Insurance Co., Ltd., Vs. Kathir @ J.Kathiravan and another*** reported in ***2021(1) TN MAC 599*** and the relevant passage is extracted hereunder:

“11. In the Appeal, under consideration, the learned Counsel for the Appellant/Insurer submitted that, the Tribunal has



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C.M.A(MD)Nos.751 and 752 of 2024

grossly erred in holding the Insurer liable to pay the Compensation and later recover from the insured. Ignoring the dictum laid by the Hon'ble Supreme Court, in case of gratuitous passenger in the Goods Vehicle. No goods was transported in the vehicle at the time of accident and the Claimant was not travelling with goods. In the absence of proof that the Claimant travelled with goods, the Tribunal ought not to have concluded that the Claimant was travelling in the Goods Vehicle as Owner of the goods. The Tribunal also wrongly understood that the premium of Rs.50 paid for Driver/Cleaner/Conductor will cover Gratuitous passengers/Owner of the goods, etc. In any event, the award of Compensation is excessive. The injury sustained does not have any bearing on the earning capacity of the Claimant. According to the Claimant, he was doing Plastic goods business. There is no proof for the same. Even assuming he is earning, his livelihood by doing business, the amputation of left leg does will not cause any impairment in his earning capacity more so, when the Doctor-PW3 admits in his deposition that the Claimant has fixed artificial limb and by that, his impairments substantially mitigated.”

12. The above decision relied on by the learned Counsel for the appellant/Insurer is squarely applicable to the case on hand. In the present case, as already pointed out, the claimants have taken a stand that they were travelling in the vehicle as owners of the goods, but admittedly



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there were no goods in the vehicle at the time of accident. But according to the claimants, they were proceeding in the said vehicle to go to Melapalayam weekly cattle market at Tirunelveli for purchasing the cattle. As rightly contended by the learned Counsel for the Insurer, the claimants have not adduced any evidence to show that the claimants were doing business in cattle and that they have engaged the van in dispute for going to Melapalayam cattle market on the particular day.

13. Moreover, as rightly pointed out by the learned Counsel for the Insurer, it is not the case of the claimants that they had engaged the vehicle for getting the cattle in a nearby village, but as per the claimants' case, they were travelling from Melur, Madurai District to Tirunelveli District. P.W.1, in his cross-examination, would admit that the first respondent's vehicle is a goods vehicle, that four persons including the driver were travelling in the vehicle and that they were not taking any goods in the vehicle at the time of accident. P.W.2, in his cross-examination would admit that they have not taken any articles along with them in the vehicle at the time of accident. Moreover, P.W.1 would admit that he is not having any documents to show that he was doing cattle business.

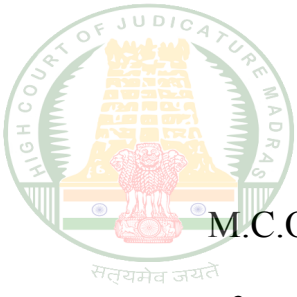


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14. Admittedly, there were no goods or articles available in the vehicle at the time of accident. As rightly pointed out by the learned Counsel for the Insurer, the seating capacity permitted in the said vehicle is 3 (2+1) including the driver. Even according to the claimant – P.W.1, four persons were travelling at the time of accident. As already pointed out, the vehicle in dispute is a goods vehicle. Since there were no goods at that time, it cannot be stated that the claimants were travelling as owners of the goods or representatives of the owners of the goods.

15. Given the facts and legal position, this Court concludes that the claimants were gratuitous passengers. Therefore, the insurer cannot be held liable. The Tribunal's finding holding the appellant/insurer liable is set aside, and the insurer is exonerated. Consequently, the vehicle owner (second respondent) is liable to pay the compensation.

16. In the result, the Civil Miscellaneous Appeals are allowed. The second respondent / owner of the vehicle is directed to deposit the compensation amount of Rs.3,30,000/- and Rs.1,38,000/- respectively along with interest at the rate of 7.5% p.a., with costs, to the credite of



C.M.A(MD)Nos.751 and 752 of 2024

M.C.O.P.Nos.485 of 2014 and 486 of 2014 respectively, within a period of one month from the date of receipt of a copy of this order and on such deposit being made, the claimants are permitted to withdraw the award amount. The appellant/Insurer is permitted to withdraw the award amount if any deposited earlier with accrued interest. Consequently, the connected Miscellaneous Petitions are closed. The parties are directed to bear their own costs.

04.08.2025

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

- 1.The Motor Accident Claims Tribunal/
The Special Subordinate Court, Madurai
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)Nos.751 and 752 of 2024

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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04.08.2025