



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10-04-2026 ::: Pronounced on : 12-06-2026

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CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CMA No. 2513 of 2019
and CMP 11927 of 2019

The United India Insurance Company Limited,
13-A, Nethaji Road, Manjakuppam,
Cuddalore District.

..Appellant(s)

Vs

1. P. Kaliyaperumal
2. E. Raja

..Respondent(s)

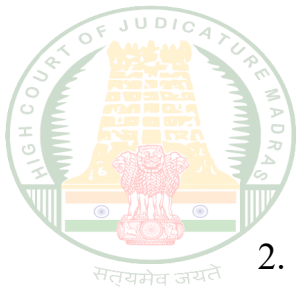
Prayer : This petition to set aside the decree and Judgment passed in MCOP No.2432 of 2014 on 12.10.2017 on the file of the learned Motor Accident Claims Tribunal (Principal District Judge) at Cuddalore.

For Appellant(s): Mr.J.Chandran

For Respondent(s): Ms.Ramyra V Rao (R1)

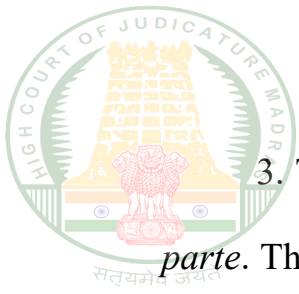
J U D G M E N T

The present Civil Miscellaneous Appeal has been filed to set aside the decree and judgement dated 12.10.2017 passed in M.C.O.P.No.2432 of 2014 on the file of the learned Motor Accident Claims Tribunal (Principal District Judge), Cuddalore.



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2. The facts giving rise to the present appeal are that the deceased was engaged in the business as a seafood merchant and was earning a sum of Rs.15,000/- per month. On 10.05.2014 at about 11.00 a.m., while the deceased was travelling in the vehicle belonging to the 1st respondent bearing Registration No.TN-51-M-6607 a mini-van, as the owner of the goods being transported therein, from north to south at Semmangkudi. The driver of the said vehicle drove the same in a rash and negligent manner and without adhering to traffic regulations, as a result, the vehicle collided with a motorcycle bearing Registration No.TN-05-T-8680 and thereafter capsized, causing the accident. Due to the accident the deceased sustained grievous injuries and multiple fractures. Though she was immediately taken to the hospital for treatment, she subsequently succumbed to the injuries. Consequently a criminal case was registered in the Crime No. 206 of 2014 against the driver of the 1st respondent's vehicle, in Sirkali Police Station alleging that the accident had occurred solely due to the rash and negligence of the aforesaid driver. The 1st respondent is the owner of the offending mini-van and the 2nd respondent is its insurer. The petitioner, being the husband of the deceased, filed a Claims Petition in M.C.O.P.No.2432 of 2014 before the Motor Accidents Claims Tribunal, Cuddalore, against respondents 1 and 2, seeking compensation to a tune of Rs.15,00,000/-.



3. The 1st respondent remained absent before the Tribunal and was set *ex parte*. The 2nd respondent/Insurance Company filed a counter statement denying the averments made in the claim petition and put the petitioner to strict proof of the age, occupation, monthly income of the deceased and prove whether he his legal heir of the deceased. The 2nd respondent further contended that the deceased was at best, an unauthorized passenger travelling in the vehicle and therefore, the Insurance Company was not liable to pay any compensation. It was further averred that, at the time of the accident more than ten persons including the deceased, were travelling in the vehicle belonging to the 1st respondent. Whereas as per the permit conditions, the permitted seating capacity of the vehicle was only two persons, thereby constituting a clear violation. The 2nd respondent also had denied that the driver of the 1st respondent vehicle held any valid driving license to drive the vehicle. The 2nd respondent also contended that the compensation claimed by the petitioner was excessive and exorbitant. Accordingly on the above grounds the 2nd respondent prayed for dismissal of the claim petition.

4. Based on the pleadings on both the sides the learned Claims Tribunal had framed the following points for determination.

1. *Whether the accident had happened due to the rash and negligent driving of the 1st respondent's vehicle driver?*



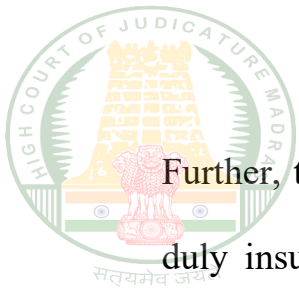
2. *Whether the petitioner is entitled to get the compensation as alleged by them?*

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3. *To what other reliefs, the petitioner is entitled to?*

5. On the petitioner's side the petitioner had examined himself as PW1 and marked Ex.P1 to Ex.P3 as evidence, and on the side of the respondents, the staff of the 2nd respondent company was examined as RW1.

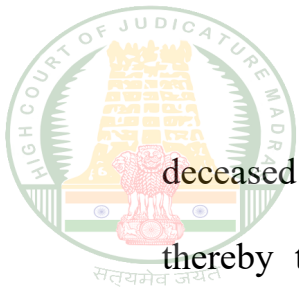
6. Upon considering the arguments on both sides and perusing the evidences available on record the learned Claims Tribunal had determined the aforesaid points. As far as the Point No.1 is considered, the learned Claims Tribunal upon the perusal of the evidence and deposition of PW1 had held that accident took place due to rash and negligence of on the part of the driver of the 1st respondent vehicle. Further the perusal of Ex.P1, the FIR copy filed against the driver of the 1st respondent vehicle, reveals that the police had registered the FIR filed against the said driver for his negligence. The learned Claims Tribunal further observed that the respondents had examined only a staff of the respondent Insurance Company as RW1, who was not even an eyewitness to the accident. Hence, the evidence of RW1 was held to be insufficient to substantiate the claims of the respondent. The respondents had also failed to examine the driver of the 1st respondent's to prove their claims with regard to his valid license.



Further, there is no dispute that the vehicle belonging to the 1st respondent was duly insured with the 2nd respondent Insurance Company on the date of the accident.

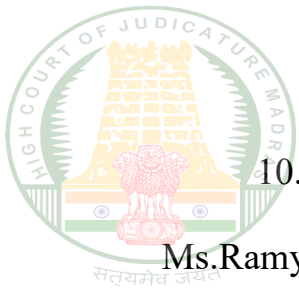
7. The main contention of the 2nd respondent company is that the deceased was gratuitous passenger and thereby the 2nd respondent is not liable to pay the compensation to the petitioner. PW1, in his evidence, had deposed that the deceased was travelling in the 1st respondent's vehicle as the owner of the goods therein. The said claim was neither specifically denied by the 2nd respondent during cross-examination nor was any contra evidence adduced to disprove the same. In such circumstances, the learned Claims Tribunal held that the contention of the 2nd respondent that the deceased was a gratuitous passenger could not be accepted. Accordingly, Point No.1 was answered in favour of the petitioner.

8. Regarding the Point No.2, the learned Claims Tribunal upon the perusal of the Ex.P2, the copy of the Postmortem Certificate had held that the age of the deceased as 55 on the date of the accident. Further though the PW1 in his evidence had deposed that the deceased was working as Sea Food Merchant and thereby was earning a sum of Rs.15,000/-per month, but however has not produced any documentary evidence to substantiate the same. Therefore the learned Claims Tribunal upon considering the age and nature of work of the



deceased had held that the monthly income of the deceased to be Rs.6000/- and thereby the annual income would amount to Rs.72,000/-. Considering the dependency 1/3rd of the income would be deducted towards her personal expenses and thereby the annual income was calculated to be Rs.48,000/-. Considering the age of the deceased as 55 years the learned Claims Tribunal had adopted the multiplier 11. Further the learned Claims Tribunal had also awarded Rs.1,00,000/- towards the Loss of Consortium and Rs.25,000/-towards the Transport and funeral expenses. Therefore the learned Claims Tribunal had held that the petitioner was entitled to a Sum of Rs.6,53,000/- rounded off to Rs.6,50,000/- towards compensation. Accordingly the Point No.2 is answered.

9. Therefore the learned Claims Tribunal vide its judgment and decree dated 12.10.2017, had held that aforesaid Claims Petition was partly allowed and the respondents 1 and 2 were directed to pay to a sum of Rs.6,50,000/- with interest at the rate of 8% per annum from the date of petition to the petitioner with costs. Accordingly the 2nd respondent company was directed to deposit the award amount together with the interest within one month of the date the order. Aggrieved by the aforesaid judgment and decree the 2nd respondent had filed the present civil Miscellaneous Appeal against the petitioner and the 1st respondent and had impleaded them as the respondents therein.



10. Heard Mr.J.Chandran, learned counsel for the appellant and Ms.Ramya V Rao, learned counsel appearing for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

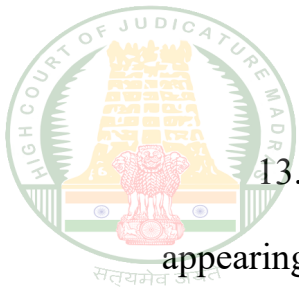
11. The learned counsel appearing for the appellant Insurance Company would submit that a liability had been fastened upon it of a claim which had arisen due to the fatal accident involving the vehicle that was insured with it that too when the deceased was only a gratuitous passenger. Further, he would submit that as per the policy that had been marked as Exhibit R1, admittedly, the vehicle was a goods vehicle, which had not covered any gratuitous passenger. The deceased cannot be treated as a third party to fasten the liability on the appellant and only the vehicle owner is liable to be fastened with the liability. He would further submit that the deceased had also not travelled in the cabin, but over the goods that was carried in the vehicle as gratuitous passenger along with several other persons at the time of the accident. He would submit that there has been a clear violation of the permit condition and hence, for such violation of permit condition, the insurance company ought to have been exonerated of its liability under the policy of insurance. He would further submit that as the insurance policy itself indicate that no premium had been paid to cover any other persons other than the party, the liability ought not to have been fastened upon the insurance company and in such cases, the principle of pay and recovery cannot also be invoked. In that context, he had relied upon the



Division Bench of this Court reported in *2018 (2) TNMAC 731*. Hence, he seeks indulgence of this Court.

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12. Ms.Ramya V Rao, learned counsel appearing for the first respondent, on the other hand, would contend that the deceased was not a gratuitous passenger. She would submit that the deceased had travelled in the goods vehicle along with the goods belonging to her and that a categorical finding had been given by the Tribunal to hold that she is not a gratuitous passenger and could be considered as a third party governed by the policy of insurance. To discredit the findings given in that regard, no materials had been placed by the appellant nor by PW1 who had categorically deposed that the deceased had travelled with the goods, and the Tribunal has also recorded a categorical finding that the second respondent in the cross-examination had not denied the status of the deceased or adduced any contra evidence to the same in rejecting the claim of the appellant that the deceased was a gratuitous passenger. In that context, she would submit that the judgment relied upon by the learned counsel appearing for the appellant cannot have any application to the facts of the case. In such an event, she would further submit that there can be no question of absolving the liability under the policy which is governed by the Statute. Hence, he seeks dismissal of the appeal.

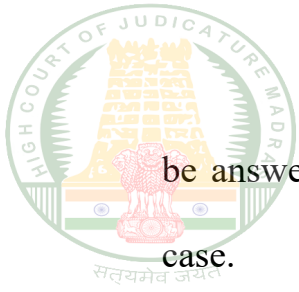


13. I have considered the submissions made by the learned counsel appearing on either side. I have also perused the materials placed on record, apart from the pleadings of the parties.

14. The primordial contention of the appellant is that the deceased was a gratuitous passenger and that the policy of the insurance cannot cover such gratuitous passenger and therefore, liability ought not to have been fastened on it.

15. The Tribunal under the impugned award had categorically rejected the claim of the appellant that the deceased was a gratuitous passenger. It had relied upon the evidence of PW1 who had categorically deposed that the deceased travelled in the vehicle as the owner of the goods. The Tribunal has also recorded the fact that the second respondent had neither discredited such a deposition of PW1 nor produced any contra evidence to discredit the evidence of PW1 with regard to the status of the deceased as gratuitous passenger. Even before this Court, to assail the said finding, the appellant had not produced any materials.

16. In that context, the other issue raised by the learned counsel for the appellant with regard to the question of pay and recover, the principle of pay and recover are not available in the present facts of the case is not necessary to



be answered and the same could be left open to be decided in an appropriate case.

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17. For the aforesaid reasons, this Court do not find any merits in the appeal and accordingly, this Civil Miscellaneous Appeal stands dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

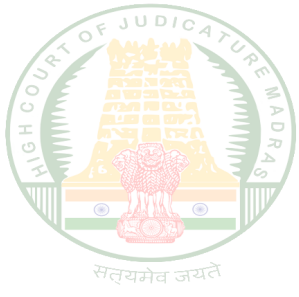
12-06-2026

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

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To

The Motor Accident Claims Tribunal
(Principal District Judge)
at Cuddalore.



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CMA No. 2513 of 2



K.KUMARESH BABU, J.

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CMA No. 2513 of 2019

12-06-2026