

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.717, 1161, 2437 of 2009,
CMA.No.3690 of 2010,
CMA.No.1455, 1456 and 2661 of 2011 &
CMA.No.40 of 2012
and MP.Nos.1,1,1 of 2009, MP.No.1 of 2010,
MP.No.1,1,1 of 2011 & MP.No.1 of 2012

United India Insurance Company Ltd.,
 Third Party Motor Claims Cell,
 No.38, Anna Salai, Chennai-2.

... Appellant in all CMAs

Vs.

1.Tamilselvan	... 1 st Respondent in CMA.No.717 of 2009
2.Prabakaran	... 1 st Respondent in CMA.No.1161 of 2009
3.Kuppan	... 1 st Respondent in CMA.No.2437 of 2009
4.M.Sekar	... 1 st Respondent in CMA.No.3690 of 2010
5.Munivel	... 1 st Respondent in CMA.No.1455 of 2011
6.Natarajan	... 1 st Respondent in CMA.No.1456 of 2011
7.J.Jagadeesan	... 1 st Respondent in CMA.No.2661 of 2011
8.Murugan	... 1 st Respondent in CMA.No.40 of 2012
9.M.Jayaprakash	... 2 nd Respondent in all CMAs

Prayer in CMA.No.717 of 2009 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 13.12.2007 made in OP.No.79 of 2005 on the file of the Motor Accidents Claims Tribunal, Ponneri.

Prayer in CMA.No.1161 of 2009 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 08.2.2008 made in OP.No.83 of 2005 on the file of the Motor Accidents Claims Tribunal, Ponneri.

Prayer in CMA.No.2437 of 2009 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 21.04.2008 made in OP.No.73 of 2005 on the file of the Motor Accidents Claims Tribunal, Ponneri.

Prayer in CMA.No.3690 of 2010 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 19.06.2008 made in OP.No.96 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

Prayer in CMA.No.1455 of 2011 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 19.06.2008 made in OP.No.104 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

Prayer in CMA.No.1456 of 2011 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 02.12.2008 made in OP.No.108 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

Prayer in CMA.No.2661 of 2011 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.06.2008 made in OP.No.69 of 2005 on the file of the Motor Accidents Claims Tribunal, Sub Court, Ponneri.

Prayer in CMA.No.40 of 2012 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.07.2008 made in OP.No.67 of 2005 on the file of the Motor Accidents Claims Tribunal, Ponneri.

For Appellant : Mr.D.Bhaskaran
(in all CMAs)
For Respondents : No Appearance
(in all CMAs)

COMMON JUDGMENT

The Insurance Company had preferred separate appeals challenging the award on the aspect of liability that was fastened on it by the Motor Accident Claims Tribunal, Ponneri vide separate awards delivered in the above MCOP cases on various dates. The claim petitions were founded when on 27-12-2002, a van capsized owing to which the complainants, who were then travelling as passengers in the said van, sustained injuries. The tabulation below indicates the amount of compensation each of them claimed and the amount awarded by the Tribunal.

CMA Nos.	Claim Petition Nos.	Amount Claimed (Rs.)	Amount Awarded (Rs.)
CMA.No.717 of 2009	MCOP.No.79 of 2005	1,50,000/-	50,500/-
CMA.No.1161 of 2009	MCOP.No.83 of 2005	1,50,000/-	55,000/-
CMA.No.2437 of 2009	MCOP.No.73 of 2005	3,00,000/-	1,03,200/-
CMA.No.3690 of 2010	MCOP.No.96 of 2005	2,00,000/-	84,000/-
CMA.No.1455 of 2011	MCOP.No.104 of 2005	2,00,000/-	38,500/-
CMA.No.1456 of 2011	MCOP.No.108 of 2005	1,50,000/-	67,800/-
CMA.No.2661 of 2011	MCOP.No.69 of 2005	1,50,000/-	52,500/-
CMA.No.40 of 2012	MCOP.No.67 of 2005	1,50,000/-	35,000/-

2. The learned counsel for the appellant/Insurance Company submitted that the Registration Certificate of the vehicle in question has been produced as Ext.P-2 and the Insurance Policy has been marked as Ext.P-3, both of which indicate that the vehicle is permitted to carry only 12 passengers and the policy cover is also for 12 passengers, whereas 18 passengers had travelled in the van at that relevant time and as there is violation of policy condition the Insurance Company is not liable. This was also its defence before the Tribunal. The learned counsel has relied on the authority of the Hon'ble Supreme Court in **National Insurance Co. Ltd., Vs. Anjana Shayam** [2007(4) CTC 593]. As per the said authority even in cases where the numbers of passengers travelled exceeds the seating capacity, the Hon'ble Supreme Court has applied doctrine of "pay and recover". The learned counsel also argued that the quantum awarded in each of the case is on the higher side.

3. As to the objection raised regarding the quantum, it may be stated that what might be a relevant argument by 2002 standards when the accident took place, has all its significance today and hence I do not find merit in the submission. As to the other argument, admittedly there is an insurance cover for 12 passengers whereas the number of claim that is before this Court is only 8, which is well within the number of persons covered by the policy. In view of this, I do not consider that the Insurance Company can wriggle out of its liability.

4. I find no merit in these appeals and the award passed by the Tribunal is confirmed. Hence, these appeals are dismissed with no costs. Consequently, connected miscellaneous petitions are closed.

5. The appellant is directed to deposit the award amount payable under each of the award in each one of the 8 cases mentioned in the tabulation above along with interest @ 7.5% per annum less any amount already deposited within four weeks from the date of receipt of a copy of this order, whereupon each of the claimants in each of the claim petitions are permitted to withdraw the same forthwith.

20.12.2016

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Index : Yes/No
Internet:Yes/No

To:

- 1.The Motor Accidents Claims Tribunal,
Ponneri.
- 2.The Section Officer,
VR Section,
High Court, Madras.

N.SESHASAYEE, J.

ds

CMA.Nos.717, 1161, 2437 of 2009,
CMA.No.3690 of 2010,
CMA.No.1455, 1456 and 2661 of 2011 &
CMA.No.40 of 2012

20.12.2016

