IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. Nos.22 to 27 of 2011
and
M.P. Nos. 1 to 1 of 2011

United India Insurance Co., Ltd.,
Divisional Manager,
G.P.M Street, Ambapuram,
Gudiyatham. ... Appellants in All CMAs/Respondent II in All CMAs

1.Tmt.Mumtaj ... R1/P1 in CMA 22/11
Shafiyulla ... R1/P1 in CMA 23/11
Navshath ... R1/P1 in CMA 24/11
Aamathi ... R1/P1 in CMA 25/11
Ashif ... R1/P1 in CMA 26/11
Ismail ... R1/P1 in CMA 27/11

2.Minor Shameer ...R2/P II in CMA 22/11

3.Minor Sireen ... R3/P III in CMA 22/11
(Minor RR2 & 3 in CMA 22/11
represented by their natural guardian R1)

4.Abdul Samath ...R4/P IV in CMA 22/11

5.S.Nabi ... R5/R1 in CMA 22/11
... R2/R1 in CMA 23/11
... R2/R1 in CMA 24/11
... R2/R1 in CMA 25 of 2011
... R2/R1 in CMA 26 of 2011

PRAYER IN ALL CMAs:- These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the common judgment and decree dated 24.06.2010 in M.C.O.P. Nos. 45/2008, 10/2008, 13/2008, 14/2008, 19/2008 & 20/2008 respectively passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Gudiyatham, at Vellore District.

For Appellant	:	Mr. J.Chandran (in All CMAS)
For Respondents	:	Mr. T. Dhanyakumar for R1 to R3in CMA 22/11 & R1 in 23 to 27/2011) R4 - died(in CMA 22/11) Mr. P. Satheesh Kumar for R5/in CMA 22/11, R2 in CMA 23 to 27/2011

COMMON JUDGMENT

As the issue and facts involved in all the appeals are one and the same, they are taken up for disposal by a common judgment.

2. Heard the learned counsel for the appellant/Insurance Company, the learned counsel appearing for the respondents/claimants and the learned counsel appearing for the respondent/ lorry owner.

3. Challenging the common award of the Motor Accidents Claims Tribunal, (Subordinate Judge), Gudiyatham, dated 24.06.2010 in M.C.O.P. Nos. 45/2008, 10/2008, 13/2008, 14/2008, 19/2008 & 20/2008, the Insurance Company has come up with the present appeals.

4. On 04.12.2007, when the deceased Azeez and 5 others were travelling in the vehicle TATA 407 Van, bearing Registration No.TN 23 W 5252, near Chinna Govindambadi, on the Ambur to Vellore Main Road, the van dashed against the concrete divider in the middle of the road. Due to the accident, all of them sustained grievous injuries and were taken to Government Hospital, Vellore. Due to fatal injuries, the said Azeez was referred to the Government Hospital, Chennai and inspite of four days treatment, he died. As per the claimants, the deceased was working as a coolie and was earning a sum of Rs.10,000/- per month. The Claim Petition No.45/2008 has been filed by his wife, children and father, before the Tribunal, seeking a sum of Rs. 26,00,000/- as compensation. The other 5 persons, who were injured in the same accident, have filed the Claim Petitions in MCOP Nos. 10, 13, 14, 19 and 20 of 2008, for the injuries sustained by them.

5. The Tribunal based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the driver of the van was having valid driving licence to drive the van came to the conclusion that the driver of the van was responsible for the accident and consequently liability was fixed on the appellant Insurance Company, being the Insurer of

the van. However, the Insurance Company denied the same, since there is violation of policy conditions.

6. After analyzing the available oral and documentary evidences, the Tribunal has awarded the following compensation, in each cases, along with an interest of 6% per annum, from the date of petition till the date of deposit:

Sl.No	MCOP Nos.	Amount awarded by the Tribunal
1	45/2008 (fatal case)	Rs.6,88,000.00
2	10/2008 (case of injury)	Rs. 12,500.00
3	13/2008 (case of injury)	Rs.1,32,850.00
4	14/2008 (case of injury)	Rs. 12,850.00
5	19/2008 (case of injury)	Rs. 12,500.00
6	20/2008 (case of injury)	Rs.1,35,000.00

7. Learned counsel appearing for the appellant/Insurance Company, mainly contended that totally 9 persons have travelled in the van against the seating capacity of 3 persons in the van, and hence only the van owner is liable to pay the compensation, as there is violation of policy conditions. The compensation of Rs.6,88,000/- awarded towards the death of one Mr. Azeez, in favour of his family/ claimants in MCOP No.45/2008 and the compensation awarded to the injured claimants, for the injuries sustained by them, are highly excessive and exorbitant, Considering the evidence of RW-1 and Ex.R-1, the Tribunal ought to have exonerated the insurance company from the entire liability. Hence, the Insurance Company has filed this appeal, questioning the liability and also the quantum of compensation.

8. The learned counsel for the claimants, per contra, contended that the deceased was working as a coolie and earning a sum of Rs.10,000/- per month, apart from Rs.3000/- by making beedies. However, the Tribunal has considered his income as only Rs.4500/- per month. The deceased was only 25 years old, at the time of accident and had left behind four dependants. The injured claimants / petitioners in MCOP Nos.13 and 20 of 2008, have suffered grievous injuries apart from fracture injury on the head and the Doctor has assessed 50% permanent disability for each of them, which would certainly have an impact in their avocation and they have been awarded a compensation of only Rs.1,32,850/- and Rs. 1,35,000/- respectively. With regard to the other petitioners in MCOP Nos. 10,14, and 19 of 2008, the claimants have suffered minor injuries and the Tribunal has also granted a sum of Rs.12,500/-, Rs.12,850/- and Rs.12,500/- respectively. Hence, he pleaded for dismissal of the Appeals.

9. In addition to the above, learned counsel for the respondent/ van owner submitted that the claimants, working as coolies to load and unload chicken, used to travel in the van and that third party insurance coverage is available for them. Since the appellant/ Insurance company is the insurer of the van and while the driver of the van holds valid driving license and all the documentary evidences, the appellant Insurance Company is liable to pay the compensation awarded by the Tribunal. Moreover, as per the provisions in IMT 39 A of the Policy conditions, the legal liability under the Workmen's Compensation Act, 1923 lies in respect of the carriage of more than six employees (excluding the driver) in goods carrying vehicles. As per the Schedule of Premium, the liability covers seven employees. Learned counsel also relies on the judgments of this Court in Royal Sundaram Alliance Insurance Co. Ltd., vs. D. Gunasekaran reported in 2014 (2) TNMAC 79 and the Hon'ble Apex Court, wherein it has been held that the Insurance Company is bound to pay the compensation and the liability cannot be foisted on the lorry owner. Hence, the Tribunal is right in holding that the Insurance Company is liable to pay the compensation.

10. As rightly pointed out by Mr. P. Satheesh Kumar, learned counsel appearing for the 5th respondent/ lorry owner, referring to the judgment of this Court in Royal Sundaram Alliance Insurance Co. Ltd., vs. D. Gunasekaran reported in 2014 (2) TNMAC 79, contended that when the policy was taken, premium has been collected for six employees. In view of the decision of this Court, the Insurance Company is bound to pay the compensation and the liability cannot be foisted on the lorry owner. Even assuming that the lorry owner is liable to pay the compensation, the lorry owner is no way responsible for the illegal travel made by the employees and hence the liability cannot be foisted on him. Mr. J. Chandran, learned counsel for the Insurance Company referred to the decision of this Court, wherein it has been held that the Insurance Company cannot be held liable for the persons who are not authorised to travel in the vehicle. In the case of National Insurance Co. Ltd. Vs, Anjana Shyam & Ors., reported in 2007 (2) TN MAC 193 (SC), which has been referred to in the above cited judgment by the learned counsel for the lorry owner, in that the Apex Court has held that the Insurance Company is liable to indemnify the driver in the cabin and not with regard to others. The decision of the Apex Court in Anjana's case has not been considered by this Court in the decision reported in 2014 (2) TN MAC 79. Hence, I am of the view that the Insurance Company is liable to pay compensation for three persons and for the other three persons, the lorry owner is liable to pay the amount. However, it is open to the lorry owner to proceed against the person,

who is responsible for the illegal travel and collect money from him.

11. After dictating the order, learned counsel for the Insurance Company, fairly submitted, that in case the claimants accept reduction in the compensation with regard to all the passengers, the Insurance Company is willing to pay the compensation to all the claimants. Ultimately, the learned counsel for the claimants also agreed for the same at 20%.

12. In the result, there shall be a reduction of 20% on the overall compensation granted to the claimants in all the Appeals and that the same shall be paid by the Insurance Company to all the claimants. There is no serious objection in respect of the interest granted at 6% per annum from the date of petition till the date of deposit.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

Case No.	Amount awarded by the Tribunal	Modified amount awarded by this Court
CMA No. 22/2011	Rs.6,88,000/-	Rs.5,50,400/-
CMA No. 23/2011	Rs. 12,500/-	Rs. 10,000/-
CMA No. 24/2011	Rs.1,32,850/-	Rs.1,06,280/-
CMA No. 25/2011	Rs. 12,850/-	Rs. 10,280/-
CMA No. 26/2011	Rs. 12,500/-	Rs. 10,000/-
CMA No. 27/2011	Rs.1,35,000/-	Rs.1,08,000/-

(i) The interest granted by the Tribunal at 6% per annum is confirmed.

(ii) The appellant /Insurance Company is directed to deposit the entire award amount as ordered by this Court, with interest and costs, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the major claimants in all the appeals, are permitted to withdraw their respective shares by filing proper application on production of a copy of this order. As far as the shares of the minor claimants in C.M.A. No. 22 of 2011, are concerned, the same is directed to be re-invested in a Nationalized Bank under a Fixed Deposit Scheme initially for a period of three years and thereafter to be renewed periodically. However, the interest accrued from such fixed deposit is permitted to be withdrawn by the 1st claimant in CMA No.22 of 2011, being the mother of the minors once in three months by filing proper application.

(iv) It is also made clear that the award amount shall be paid to the claimants by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimants and it should not be issued in favour of any other person/Company. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To :
The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gudiyatham at Vellore District.
+1cc to Mr.T.Dhanyakumar, Advocate Sr.15614
+2cc to Mr.P.Satheeshkumar, Advocate Sr.15631 & 15636
+1cc to Mr.J.Chandran, Advocate sr.16204
+3cc's to Mr.P. Satheesh Kumar, Advocate,
S.R.Nos. 15632 to 15634 (13.06.2016)
+1cc to Mr.P. Satheesh Kumar, Advocate,
S.R.No. 15635[11/7/16]

C.M.A.Nos.22 to 27 of 2011
and
M.P. Nos. 1 to 1 of 2011

ev(CO)
srg(06/06/2016)