IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.740 of 2009 & MP.No.1 of 2009
C.M.A.No.572 of 2010 & MP.No.1 of 2010
C.M.A.No.1314 of 2011 & MP.No.1 of 2011
& C.M.A.No.2153 of 2014 & and M.P.No.1 of 2014

1.The United India Insurance Company Ltd.,
Third Party Motor Claims Cell,
No.38, Anna Salai,
Chennai - 600 002. ... Appellant in CMA.Nos. 740 of 2009, 572 of 2010 & 1314 of 2011

2.The United India Insurance Company Ltd.,
Third Party Motor Claims Cell,
Office at No.73C, M.T.H.Road,
Ambattur,
Chennai. ... Appellant in CMA.No.2153 of 2014

Vs

Respondents in CMA.No.740 of 2009:
1.Chockammal
2.Minor Geetha
3.Minor Malathi
4.Minor Vasanth
5.Ponniammal
6.Shakir Basha

Respondents in CMA.No.572 of 2010:
1.N.Sekar
2.Shakir Basha

Respondents in CMA.No.1314 of 2011:
1.Sharmila
2.Shakir Basha

Respondents in CMA.No.2153 of 2014:
1.T.K.Palani
2.Shakir Basha

Prayer in CMA.No.740 of 2009 : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 04.7.2008 made in MCOP.No.55

of 2006 on the file of the Motor Accident Claims Tribunal (Fast Track Court), Ponneri.

Prayer in CMA.No.572 of 2010 : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.10.2008 made in MCOP.No.31 of 2006 on the file of the Motor Accident Claims Tribunal, Ponneri.

Prayer in CMA.No.1314 of 2011 : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.10.2008made in MCOP.No.752 of 2005 on the file of the Motor Accident Claims Tribunal, Ponneri.

Prayer in CMA.No.2153 of 2014 : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.11.2012 made in MCOP.No.827 of 2007 on the file of the Motor Accident Claims Tribunal (IV Additional District Judge), Ponneri.

For Appellants : Mr.D.Bhaskaran
(in all CMAs)

For Respondents : Mr.S.Parthasarathi [R1 to R5]
(in CMA.No.740 of 2009)

For Respondents : Mr.S.Parthasarathi [R1]
(in CMA.No.572 of 2010) No appearance [R2]

For Respondents : Mr.S.Parthasarathi [R1 & R2]
(in CMA.No.1314 of 2011)

For Respondents : Mr.S.Parthasarathi [R1]
(in CMA.No.2153 of 2014) No appearance [R2]

JUDGMENT

The Insurance Company which is arrayed as second respondent in MCOP.Nos.55 of 2006, 31 of 2006, 752 of 2005 and 827 of 2007 respectively before the Tribunal has preferred these appeals, challenging its liability.

2. In an accident that took place on 15.12.2004, in which the driver of the jeep bearing Registration No. TN-20-C-0657 belonging to one Shakir Basha ran rashly and hit a stationary lorry in which one Subramani, a passenger of the jeep died

whereas the other passengers suffered injuries. The legal representatives of the said Subramani had preferred a claim petition and they are the party respondents in CMA.No.740 of 2009, and of the other passengers, one Sekar, Sharmila and T.K.Palani also preferred claim petitions and they have been arrayed as respondents in CMA.Nos.572 of 2010, CMA.No.1314 of 2011 and CMA.No.2153 of 2014 respectively.

3.The essential point raised by the learned counsel for the appellant is that as per the FIR registered immediately on the occurrence of the accident it is stated that the total number of passengers travelling at that relevant time was 18, whereas as per the Registration Certificate of the jeep, the total seating capacity including the driver is only 10. He added that even though the negligence is on the part of the driver of the jeep inasmuch as the number of passengers travelled in the jeep exceeded the seating capacity, there was an evident breach of policy condition and the Insurance Company is not liable. He also added it has come out in evidence that the jeep has been hired for travel, whereas the Jeep has not been insured for the said purpose.

4. The details of the Civil Miscellaneous Appeals as corresponding to the original claim petition, nature of injury suffered, claim made and in particular the Exhibit Nos- Policy, FIR, RC book is tabulated below :

CMA.Nos.	Claim Petition Nos.	Nature of Injury	Amount Claimed (Rs.)	Amount Awarded (Rs.)	Exhibits		
					Policy	FIR	RC Book
CMA.No.740 of 2009	MCOP.55 of 2006	Fatal	6,00,000/-	3,32,000	Ex.P3	Ex.P5	Ex.P2
CMA.No.572 of 2010	MCOP.31 of 2006	Injury	2,50,000/-	66,500	Ex.P3	Ex.P1	Ex.P2
CMA.No.1314 of 2011	MCOP.752 of 2003	Injury	2,00,000/-	1,11,300	Ex.P4	Ex.P1	Ex.P6
CMA.No.2153 of 2014	MCOP.827 of 2007	Injury	4,00,000/-	1,31,000	Ex.P3	Ex.P1	Ex.P2

5. When the case was taken, the learned counsel on record for the owner of the vehicle is not present and the counsel for the claimant alone was present. The learned counsel for the claimant would submit that even in case of violation of policy condition, the Court could always apply "pay and recover" doctrine and at any rate it is a comprehensive insurance that covers the entire seating capacity of the vehicle.

6. Admittedly, as per FIR 18 persons were stated to have travelled in the jeep as against the permitted seating capacity of 10, a fact that could be gathered from the registration certificate of the Jeep involved. It is also not in dispute that the policy issued is a comprehensive policy which entirely covers the liability arising out of injury or death of all those who equal the seating capacity of the jeep. However, so far as these cases are concerned, there are only four claims which are well within the limit of the permitted seating capacity and therefore, this Court is not inclined to interfere with the award. As to the other contention that the jeep in question has not be insured for hiring is concerned, Insurance Company has not produced any evidence and therefore, whether there was any violation of policy condition need not be considered at this stage.

7. There is no merit in the appeals and hence dismissed without costs. The learned counsel for the appellant submitted that the Insurance Company has deposited the award amount in CMA.No.740 of 2009, CMA.No.572 of 2010, CMA.No.1314 of 2011 and 50% of the award amount in CMA.No.2153 of 2014. The Insurance Company is directed to deposit the balance 50% with interest @ 7.5% per annum with interest before the Tribunal in O.P.No.827 of 2007. The claimants are entitled to withdraw the amount whatever that remains in the account or whatever to be deposited as the case may be, forthwith. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accident Claims Tribunal
Ponneri.

+4cc to Mr.S.Parthasarathy, Advocate Sr.70428
+1cc to Mr.D.Bhaskaran, Advocate Sr.70439

C.M.A.No.740 of 2009 & MP.No.1 of 2009
C.M.A.No.572 of 2010 & MP.No.1 of 2010
C.M.A.No.1314 of 2011 & MP.No.1 of 2011
& C.M.A.No.2153 of 2014 & and M.P.No.1 of 2014

sk[co]
srg 25/01/2017