



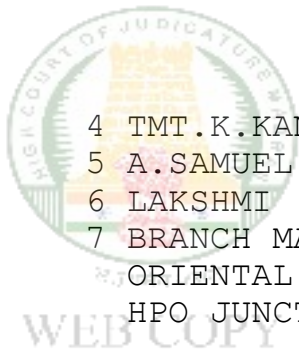
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAMC.M.A. (MD) Nos.1360 to 1365 of 2016
and C.M.P. (MD) Nos.11362 to 11367 of 2016UNITED INDIA INSURANCE CO., LTD.,
CITY BRANCH I TUTICORIN,
71 C, W.G.C. ROAD, TUTICORIN,
REP. BY ITS BRANCH MANAGER... APPELLANT/2ND RESPONDENT
IN ALL THE PETITIONS**VS.**1.KALAICHELVI
2.MINOR RAJA
3.MINOR HARI PRASAD
MINOR RESPONDENTS 2 AND 3 ARE
REPRESENTED BY THEIR MOTHER AND
GUARDIAN 1ST RESPONDENT4.M.SUBRAMANIAN
5.VAIRAMBAL
6.A.SAMUEL
7.LAKSHMI... RESPONDENTS 1 TO 5/CLAIMANTS
... 6TH RESPONDENT/1ST RESPONDENT
... 7TH RESPONDENT/3RD RESPONDENT8.BRANCH MANAGER,
ORIENTAL INSURANCE CO., LTD.,
HPO JUNCTION, NAGERCOIL.... 8TH RESPONDENT/4TH RESPONDENT
IN CMA (MD) .1360/20161 P.VELAMMAL
2 A.SAMUEL
3 LAKSHMI
4 BRANCH MANAGER,
ORIENTAL INSURANCE COMPANY LTD.,
HPO JUNCTION, NAGERCOIL.... 1 RESPONDENT/CLAIMANT
... 2&3 RESPONDENT/1&3 RESPONDENT
... 4 RESPONDENT/4 RESPONDENT
IN CMA (MD) .1361/20161 K.SUDHA
2 MINOR K.KISHOR,
S/O LATE KIRUBAKARAN,
(MINOR R2 REP. BY HIS MOTHER AND
GUARDIAN 1ST RESPONDENT)
3 Y.THULASI



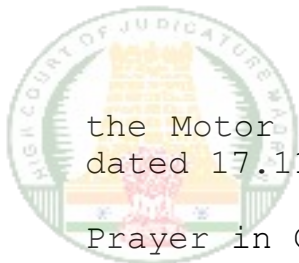
4 TMT.K.KANNIAMMAL	... 1 TO 4 RESPONDENTS/CLAIMANTS
5 A.SAMUEL	... 5 RESPONDENT/1 RESPONDENT
6 LAKSHMI	
7 BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD., HPO JUNCTION, NAGERCOIL.	... 7 RESPONDENT/4 RESPONDENT IN CMA (MD) .1362/2016
1 VELAMMAL	... 1 RESPONDENT/CLAIMANT
2 A.SAMUEL	... 2 RESPONDENT/1 RESPONDENT
3 LAKSHMI	... 3 RESPONDENT/3 RESPONDENT
4 BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD., HPO JUNCTION, NAGERCOIL.	... 4 RESPONDENT/4 RESPONDENT IN CMA (MD) . 1363/2016
1 THANGAVEL	
2 MINOR DHANALAKSHMI, D/O THANGAVEL,	
3 MINOR SERMADURAI, S/O THANGAVEL, (MINORS R2 AND R3 REPRESENTED BY THEIR FATHER AND NEXT FRIEND 1 ST RESPONDENT)	... 1 TO 3 RESPONDENTS/CLAIMANTS
4 A.SAMUEL	... 4 RESPONDENT/1 RESPONDENT
5 LAKSHMI	... 5 RESPONDENT/3 RESPONDENT
6 BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD., HPO JUNCTION, NAGERCOIL.	... 6 RESPONDENT/4 RESPONDENT IN CMA (MD) .1364/2016
1 MURUGAN	
2 ESWARI	... 1&2 RESPONDENTS/CLAIMANTS
3 A.SAMUEL	... 3 RESPONDENT/1 RESPONDENT
4 LAKSHMI	... 4 RESPONDENT/3 RESPONDENT
5 BRANCH MANAGER, ORIENTAL INSURANCE COMPANY LTD., HPO JUNCTION, NAGERCOIL.	... 5 RESPONDENT/4 RESPONDENT IN CMA (MD) .1365/2016

Prayer in CMA(MD). 1360/ 2016 :

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 17.11.2003 made in M.C.O.P.No.1615 of 2001 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Tirunelveli.

Prayer in CMA(MD). 1361/ 2016 :

<https://hcservices.ecourts.gov.in/hcservices/> to allow this appeal, set aside the judgment and decree passed as against the Appellant in MCOP.No.1704/2001 on the file of



the Motor Accident Claims Tribunal, Fast Track Court I, Tirunelveli dated 17.11.2003.

Prayer in CMA(MD). 1362/ 2016 :

To allow this appeal, set aside the judgment and decree passed as against the Appellant in MCOP.No.1871/2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court I, Tirunelveli, dated 17.11.2003.

Prayer in CMA(MD). 1363/ 2016 :

To allow this appeal, set aside the judgment and decree passed as against the Appellant in MCOP.No.1703/2001 on the file of the Motor Accident Claims Tribunal, Fast Track Court I, Tirunelveli, dated 17.11.2003.

Prayer in CMA(MD). 1364/ 2016 :

To allow this appeal, set aside the judgment and decree passed as against the Appellant in MCOP.No.504/2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court I, Tirunelveli, dated 17.11.2003.

Prayer in CMA(MD). 1365/ 2016 :

To allow this appeal, set aside the judgment and decree passed as against the Appellant in MCOP.No.1701/2001 on the file of the Motor Accident Claims Tribunal, Fast Track Court I, Tirunelveli, dated 17.11.2003.

For Appellants

: Mr.R.Srinivasan

For R1 to R5 in CMA(MD).No.1360/2016

For R1 in CMA(MD).No.1361/2016

For R1 to R4 in CMA(MD).No.1362/2016

For R1 to R3 in CMA(MD).No.1364/2016

For R1 & R2 in CMA(MD).No.1365/2016

: Mr.T.Selvakumar

For R8 in CMA(MD).No.1360/2016

For R4 in CMA(MD).No.1361/2016 & 1363/2016

For R7 in CMA(MD).No.1362/2016

For R6 in CMA(MD).No.1364/2016

For R5 in CMA(MD).No.1365/2016

: Mr.K.Bhaskaran

COMMON JUDGMENT

It is a head on collusion between the Mahendra Van insured with the United India Insurance Company Ltd., and the Mini Lorry insured with the Oriental Insurance Company. The unfortunate accident took place on 07.10.2001 at about 11.30 hours in Thiruchendur-Kulasekarapattinam main road. In this accident, 9 persons died and 6 persons got injured grievously. The legal heirs of the deceased as well as the injured victims filed their respective claim



applications before the Motor Accidents Claims Tribunal, Tirunelveli. The Tribunal passed award granting compensation to the respondents/claimants, which are challenged before this Court by the appellant Insurance Company only on the ground that 50% of the liability fixed on the appellant is erroneous and 100% liability ought to have fixed on the Oriental Insurance Company and the appellant Insurance Company ought to have exonerated in toto.

2. The contention of the learned Counsel for the appellant is that in the Mahindra Van which met with the accident the permitted capacity is $12 + 1 = 13$ (including the driver), whereas 30 persons travelled in the van as passengers and there is a violation of policy condition and therefore, the appellant Insurance Company is not liable to pay any compensation to the victims.

3. Such a contention made by the learned Counsel for the appellant deserves no consideration in view of the fact that the third party claimants cannot be denied compensation, on account of certain violations committed by the owners of the vehicle or otherwise. Hence, this Court is not inclined to consider the grounds raised by the appellant in these appeals.

4. Further the findings of the Tribunal is very clear that the negligence was caused by both the drivers of the respective vehicles and therefore, the liability was fixed 50:50 and there is no error on the findings of the Tribunal and this Court is not inclined to consider the present appeals filed by the appellant - Oriental Insurance Company. Since it is a case of violation of policy condition, more specifically a statutory violation by carrying more passengers than the permitted passengers, this Court is inclined to pass the order of pay and recovery, based on the judgment rendered by the Honourable Supreme Court in the case of **Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)**.

5. This Court is inclined to consider these appeals on this ground alone. In the case of **Oriental Insurance Co.Ltd., Vs. Shri Nanjappan and others, reported in I (2004) ACC 524 (SC)** the Hon'ble Supreme Court in paragraph 7, has been held as follows:-

"(7)For the purpose of recovering the compensation amount from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the insured was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in



accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured."

6. Accordingly pay and recovery is ordered. In all other aspects, the awards of the Tribunal made in M.C.O.P.Nos.1615, 1704, 1871, 1703 and 1701 of 2001 and 504 of 2002 are confirmed. The appellant Insurance Company is directed to deposit the entire awarded amount that is fixed on their liability with accrued interest and costs within a period of four weeks from the date of receipt of a copy of this order, if not already deposited. The major claimants in all these appeals are permitted to withdraw the entire award amount awarded to them with accrued interest and costs through RTGS by filing necessary application before the Tribunal concerned. The amount awarded to the minor claimants shall be deposited in a nationalized bank till they attain majority and the interest accrued thereon is permitted to be withdrawn by their guardian/next friend once in three months directly from the bank.

7. With the above observations, all the Civil Miscellaneous Appeals are disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal,
Fast Track Court No.I,
Tirunelveli.

+ 1 CC TO Mr.T.SELVAKUMAR, ADVOCATE IN SR No. 72572
+ 5 CC TO Mr.R.SRINIVASAN, ADVOCATE IN SR No. 73145 TO 73149
+ 6 CC TO Mr.K.BHASKARAN, ADVOCATE IN SR No. 72266 TO 72271

SJ

TE/SV-MMS : 10/02/2017 : 5P/14C

C.M.A. (MD) Nos.1360 to 1365 of 2016
and C.M.P. (MD) Nos.11362 to 11367 of 2016
24.11.2016