IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)Nos.2154 to 2160 of 2004
& C.M.P.Nos.16340 to 16346 of 2004

Branch Manager,
The Oriental Insurance Co Ltd.,
3-L, Sidda Veerappa Chetty Street,
Dharmapuri. .. Petitioner in all C.R.Ps'

Vs.

1.Devan
1.Srinivasan
1.Govindasamy
1.Kaaliammal
1.M.Sampath
1.Govindi
1.Sivagami .. 1st respondent in C.R.P.Nos.2154 to 2160/2004

2.M.Rajalingam

3.Branch Manager,
National Insurance Co. Ltd.,
No.62, T.S.R.Big Street,
Kumbakonam, P.C.No.612 001.

4.P.Thiruvarasan ..Respondents 2 to 4 in all C.R.Ps'

4th respondent ex parte in lower court;
respondents 2 & 3 given up as
unnecessary in C.M.A itself

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal orders dated 29.08.2003 made in M.C.O.P.Nos.1120, 1122, 1121 and 1127 to 1130 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Krishnagiri, Dharmapuri District.

(In all the C.R.Ps')

For Petitioner	: Mr.N.Vijaya raghavan
For R1	: Not ready in notice
For R2 & R3	: given up
For R4	: Dispense with

COMMON ORDER

These civil revision petitions are filed against the fair and decretal orders dated 29.08.2003 made in M.C.O.P.Nos.1120, 1122, 1121 and 1127 to 1130 of 2002 on the file of the Motor Accidents Claims Tribunal, I Additional District Court, Krishnagiri, Dharmapuri District.

2. The issues involved in all the civil revision petitions are one and the same. Therefore, disposed of by this common order.

3. The petitioner is fourth respondent, first respondent in

all the civil revision petitions are claimants and respondents 2 to 4 are the respondents 1 to 3 in M.C.O.P.Nos.1120, 1122, 1121 and 1127 to 1130 of 2002. The fourth respondent is owner of the tempo bearing Registration No. TN 29 U/8004 which is insured with the petitioner. The second respondent is owner of the tempo bearing Registration No. TN 43 6727 which is insured with the third respondent, involved in the accident.

4. According to the claimants/first respondent in all the civil revision petitions, they were travelling in a tempo belonging to the fourth respondent, insured with the third respondent. At that time, the driver of the tempo belonging to the second respondent, insured with the third respondent came in the opposite direction in rash and negligent manner and dashed against the tempo belonging to the fourth respondent and caused accident. All the claimants sustained injuries. First Information Report was registered against the driver of the tempo belonging to the fourth respondent. The claimants filed the above claim petition, claiming a sum of Rs.15,000/-, Rs.10,000/-, Rs.10,000/-, Rs.10,000/-, Rs.20,000/-, Rs.15,000/-

and Rs.15,000/- respectively in M.C.O.Ps' as compensation against all the respondents.

5. The respondents 2 and 4 filed separate counter and blamed the driver of the other tempo for the accident. The petitioner also contended that at the time of accident, the claimants and others, totally 28 persons travelled as an unauthorised passengers in a goods carriage in violation of permit and policy condition. Therefore, the petitioner is not liable to pay compensation.

6. Before the learned Judge, the first respondent in all the civil revision petitions examined themselves as PW7, PW8, PW10, PW13 to PW15 and PW17 respectively and one doctor Ashok kumar was examined as PW24. First Information Report dated 08.06.2001 was marked as Ex.A1 and wound certificates of the first respondent in all the civil revision petitions were marked as Exs.A11, A12, A14, A17 to A19 and A21. On behalf of the petitioner and respondents 2 to 4, one Rathinavel was examined as RW1 and an insurance policy, a letter sent by the petitioner to

the fourth respondent and the acknowledgement for the letter received by the fourth respondent were marked as Exs.B1, B2 and B3.

7. Considering the evidence of PWs1 and 2 and the reason given by PW1 for lodging FIR against the driver of the tempo belonging to fourth respondent, the Tribunal held that both the respondents 2 and 4 are responsible for the accident and are liable to pay compensation. Since the vehicle belonging to the second respondent is insured with the third respondent, the third respondent is liable to pay compensation on behalf of the second respondent. As far as the petitioner, insurer of the vehicle belonging to the fourth respondent is concerned, the Tribunal held that in view of the fact that claimants travelled as unauthorised passengers, the petitioner is not liable to pay compensation and directed the petitioner to pay at the first instance and recover the same from the fourth respondent.

8. Against the said orders dated 29.08.2003 made in M.C.O.P.Nos.1120, 1122, 1121 and 1127 to 1130 of 2002, the

present civil revision petitions are filed by the petitioner.

9. From the materials on record, it is seen that the claimants along with others, in total 28 persons travelled in the tempo belonging to the fourth respondent. The tempo belonging to the fourth respondent is a goods carriage. The claimants travelled in the said vehicle as unauthorised passengers/gratuitous passengers. They travelled in a goods vehicle contrary to the permit and policy condition. Now, it is well settled that the Insurance Company is not liable to pay compensation for the unauthorised/gratuitous passengers travelling in a goods vehicle. A Division Bench of this Court in a judgment reported in "***2012 (1) TN MAC 89 (DB) (Royal Sundaram Alliance General Insurance Co. Ltd., Vs. P.Ayyakannu)***" has held that gratuitous passengers travelling in a goods carriage are not entitled to claim compensation from Insurance Company. Paragraphs 7 to 12 elaborately considered this issue and paragraph 10 of the said judgment held as follows:

"10. Rule 236 provides that no person shall be carried in the cabin of a goods carriage beyond the number for which there

is a seating accommodation. In the paragraph extracted above from Anjana Shyams case, the Supreme Court held that Section 149 cannot be understood as imposing a liability on the insurer to make payment even in respect of those who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and that though the insurer is bound to cover the third party risks in respect of passengers, the risks can only be understood to mean risks of passengers authorized or permitted to be carried in the said vehicle. We are bound by this judgment and therefore, we hold that the insurer is liable to indemnify the liability only with regard to Ayyakannu who sat in the cabin of the vehicle and along with the driver and whose liability alone the insurer was bound to cover."

10. In view of the well settled judicial pronouncements, the petitioner is not liable to pay compensation. The Tribunal, having rightly held that the petitioner is not liable to pay compensation, erred in ordering pay and recovery. In the present case, the Tribunal has awarded only a meagre sums of Rs.8,000/-, Rs.5,500/-, Rs.5,500/-, Rs.5,500/-, Rs.10,000/-, Rs.6,000/- and Rs.8,000/- respectively in all the M.C.O.Ps' and petitioner was directed to pay 50% to the said award amount. Taking into consideration the interest of the justice and equity, I confirm the

V.M.VELUMANI,J.

gsa

award of the Tribunal directing the petitioner to pay its share of compensation in the first instance and is entitled to recover the amount from fourth respondent by filing E.P, based on the award passed by the Tribunal without initiating any proceedings for recovery of the said amount.

11. Therefore, the civil revision petitions are dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

31.08.2017

Index: Yes/No
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To

The I Additional District Judge,
(Motor Accidents Claims Tribunal)
Krishnagiri, Dharmapuri District.

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