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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.Nos. 2354, 2364, 2424, 2461, 2498,
3442 of 2005, and 1656 of 2014
and

C.M.P.Nos.12554, 12590, 12886, 13138,
13254, 17451 of 2005 and 1 of 2014

New India Assurance Co.Ltd.,
Arni.

..Appellant/2nd Respondent
in All C.M.As

Vs.

K.T.Mannu

..1st Respondent/Petitioner
in C.M.A.No.2354 of 2005

K.Valliyammal

..1st Respondent/Petitioner
in C.M.A.No.2364 of 2005

K.P.Paramanandam

..1st Respondent/Petitioner
in C.M.A.No.2424 of 2005

A.Dharani

..1st Respondent/Petitioner
in C.M.A.No.2461 of 2005

K.C.Pichandi

..1st Respondent/Petitioner
in C.M.A.No.2498 of 2005

K.Kuppan

..1st Respondent/Petitioner
in C.M.A.No.3442 of 2005

Minor Siva

..1st Respondent/Petitioner
in C.M.A.No.1656 of 2014

Rep.by his father & Guardian
Arjunan

S.Imthiyass

..2nd Respondent/1st Respondent in All C.M.As.

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M.C.O.P.No.405, 406, 377, 408, 322, 315 and 317 of 2001 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar, Tiruvannamalai, Tiruvannamali District, dated 29.10.2004.



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For Appellant in all CMAs. : Mr.M.Krishnamoorthy
For Respondent in all CMAs. : Mr.V.P.Appuswamy, for R1
Mr.G.Parthiban, for R2

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the Judgment and Decree made in M.A.C.T.O.P.No.405, 406, 377, 408, 322, 315 and 317 of 2001 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Cheyyar dated 29.10.2004.

2. The brief facts of the case are as follows:-

On 27.04.2001 at about 12.30 p.m., the claimants was returning in a TATA van bearing Registration No.TN-31-A-3533 after attending a marriage function. While the van was proceeding in the Kanchipuram-Vandavasi Road, between Dusi and Maamandoor, the driver of the said van, driven the same in a rash and negligent manner, hit against the tree on the left side of the road, all the persons including the driver of the van were sustained injuries. A Criminal case was registered against the driver of the van in the Dusi Police Station for his rash and negligence driving. The injured persons have filed separate claim petitions before the tribunal, claiming compensation for the injuries sustained by them in the said accident.

3. The appellant/Insurance Company, in the counter statement, has stated that the vehicle in which the claimants have traveled was permitted to carry only goods. But, on the date of occurrence, several number of persons were travelled as passengers in the said goods carriage vehicle, which is against the violation of policy and permit conditions. Hence, it is stated that the Insurance Company is not liable to pay any compensation.

4. The Tribunal, after analyzing the evidence and documents placed before it, has observed that the though it is a settled law that the passengers cannot travel in a good vehicle, which insured under the terms and conditions of good policy, to meet the ends of justice, the tribunal was directed to pay the compensation to the claimants and recover the same from the owner of the vehicle, since the driver of the said van is solely responsible for the accident. Aggrieved against the same, the appellant/Insurance Company has preferred these appeals.



5. In the grounds of appeal, it has been stated that as per the policy, only six persons are permitted to travel in the goods carriage vehicle, but on the date of accident, more than fifty persons were travelled in the said goods vehicle. Therefore, it was a clear violation of the policy condition. The further averment is that the liability fixed by the tribunal on the appellant/Insurance company is not proper.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On a perusal of the records, it is clear seen that totally are fifty numbers were travelled as passengers in the said van, which solely meant for the purpose of carrying goods and the policy was also taken for the said purpose only.

8. It is seen from the records that on the side of the appellant, RW.2 was examined and he had deposed before the Tribunal that the vehicle which was involved in the said accident is a goods carriage vehicle and on 27.04.2001 nearly 100 persons were allowed to travel in the said vehicle who were returning after attending a marriage function and the vehicle was used against the policy and permit conditions. From the evidence of the appellant, it is clearly proved that the claimants travelled in the said goods vehicle as passengers as per Ex.R8- permit of the vehicle. Hence, it is the argument of the appellant/Insurance Company that they are not liable to pay the compensation as awarded by the tribunal.

9. The learned counsel appearing for the appellant has referred a case law reported in 2008 (1) MAC 348 (SC) in the case of National Insurance Co. Ltd vs Prema Devi & Ors Dated: 29.02.2008. The relevant portion of the judgment is extracted hereunder;

"8. In Satpal Singh's case (supra) this Court proceeded on the footing that provisions of Section 95 (1) of the old Act are in pari materia with Section 147(1) of the Act as it stood prior to the amendment in 1994.

13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes



11. In the result, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12. The second respondent/owner of the vehicle is directed to deposit the award amount awarded by the Tribunal with interest and costs, before the Tribunal, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the respective shares of respective claimants to their bank accounts through RTGS within one week thereon. The Appellant/Insurance Company is permitted to withdraw the amount deposited, if any.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal (Subordinate Judge),
Cheyyar, Tiruvannamalai District.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

AKM/18.11.19/5p-3c/

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