IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.Nos.207 and 1584 of 2008
and
C.M.P.Nos.18281 and 18238 of 2018

Latha ... Appellant/Claimant in CMA 207 of 2008

Nallammal ... Appellant in CMA 1584 of 2008

..Vs..

R.Selvaraj (Died)

1. United India Insurance Company Ltd.,
   rep.by its Branch Manager,
   No.42, Mutt Street, (1st Floor),
   Kumbakonam Town.

2. Shankar ...Respondents/Respondents in both CMA's

COMMON PRAYER:
Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.12.2002 made in M.C.O.P.Nos.135 and 133 of 2001 respectively on the file of the Motor Accidents Claims Tribunal, (Additional District and Sessions Judge) of Nagapattinam.

For Appellants : Mrs.S.T.P.Kuilmozhi

For Respondents : Mr.S.Arun Kumar for R1
No appearance for R2.

COMMON JUDGMENT

The appellants in C.M.A.Nos.207 and 1584 of 2008 are the claimants in M.C.O.P. No.135 of 2001 and 133 of 2001 respectively. They filed the above Claim Petitions seeking compensation for the injuries sustained by them in a road accident that took place on 22.06.2000, when the appellants/claimants were travelling as passengers in a mini bus bearing Registration No.TN 31 9599 belonging to the third respondent in M.C.O.Ps. According to the appellants/claimants, when the bus was nearing Anna Nagar, Mannargudi, the driver of the bus drove the bus rashly and negligently, as a result of which, the bus toppled. It is further contended by the appellants/claimants that they sustained grievous injuries on account of the accident and that since the owner of the mini bus had insured the bus with the second respondent in M.C.O.Ps / the United Insurance Co. Ltd., both of them are jointly and severally liable to pay compensation of Rs.50,000/- each. The learned Additional District Judge, Motor Accidents Claims Tribunal, Nagapattinam, after analysing the evidence on record, awarded a compensation of Rs.10,000/- each to the present appellants/claimants since the injuries sustained by them were simple in nature. Furthermore, the tribunal had held that since the maximum seating capacity in the mini bus was 25 and as the bus was over loaded with 70 passengers, there was a violation of policy condition and therefore, fixed the liability on the owner of the mini bus bearing Registration No.TN 31 9599 in respect of the passengers who were travelling in the bus in excess of 25 seating capacity. Aggrieved over the said order passed by the Tribunal, the appellants have filed the present appeals.

2. Mrs.T.P.Kuilmozhi learned counsel appearing for the appellants would contend that, though there is a violation of policy condition, the tribunal should have directed the second respondent, the United India Insurance Co. Ltd., to pay the award amount and then recover the same from the owner of the vehicle and that the tribunal, in the instance case, had not adopted the recourse to pay and recovery and therefore, the order passed by the tribunal is liable to be set aside.

3. Per contra, the learned counsel appearing for the second respondent/Insurance Company relied on the decision in National Insurance Company Limited -vs- Anjana Shyam and others reported in 2007(2) TNMAC 193 Civil Appeal Nos.2422-2459 of 2001 and contended that the insurance company, while insuring the passengers, can only insure the number of passengers as shown in the Certificate of Registration and that the insurance company cannot be fastened with liability in respect of more passengers than permitted in the Certificate of Registration. In the decision cited supra, it has been held as follows:

> 11.Section 149 of the Act speaks of the judgment or award in respect of the liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 of the Act having to be satisfied. Section 147(1)(b) compels insuring the person or classes of person specified in the policy to the extent specified in sub-section (ii) of that

Section. The case on hand will come under sub-clause (ii) of clause (b) of Section 147(1) of the Act which obliges the owner to take out insurance compulsorily against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

15.In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be taken under the Act and for whom insurance has been taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.

16.Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.

4. In the instant case, the tribunal has clearly directed the Insurance Company to pay the compensation in respect of 25 passengers and directed the owner of the vehicle to pay the remaining compensation amount. Therefore, the order passed by the Tribunal is perfectly in order and I therefore, do not see any reason to interfere with the findings recorded by the tribunal.

5. As far as the quantum of compensation is concerned, admittedly, the claimants have sustained simple injuries in the accident. The Tribunal had awarded Rs.10,000/- each for the appellants/claimants. The learned counsel appearing for the appellants would contend that, both the claimants in the appeals were hospitalised for more than 5 days in a Government hospital

and therefore, the award amount of Rs.10,000/- each should be enhanced. Considering the number of days of hospitalisation of the claimants, the award amount of Rs.10,000/- is enhanced to Rs.15,000/- (Rupees Fifteen Thousand only) each, which shall be paid by the owner of the mini bus bearing Registration No. TN 31 9599, with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above observations, the Civil Miscellaneous appeals are allowed partly. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga/rna

To

1. The Additional District and Sessions Judge,
   Nagapattinam.

2. The Record Keeper,
   V.R.Section, High Court,
   Madras-104 (2 Copies)

+1cc to Mrs.S.T.P.Kuilmozhi, Advocate, S.R.No.88280

C.M.A.Nos.207 and 1584 of 2008
and
C.M.P.Nos.18281 and 18238 of 2018

GJ(CO)
CS/25/03/2019