

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2017
Pronounced on : 11.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.1385 to 1397 of 2008
&
M.P.Nos.1 to 1 of 2008

The Manager,
The United India Insurance Co. Ltd.,
No.470, G.N.T. Road, Red Hills,
Chennai - 52.

...Appellant/Respondent 2 in all in all CMA's

Vs.

1.Ellammal ... Respondent 1/Claimant in CMA.No.1385/2008

2.Lalitha ... Respondent 2 in all CMA's/
Owner of the Vehicle

Minor Hemanathan
S/o.Ravi, rep by his
father and guardian Ravi ... 1st Respondent in CMA.1386/08

Minor Nagaraj S/o.Kuppan,
rep by his Father and Guardian,
Kuppan. ... 1st Respondent in CMA. 1387/08

Minor Kanimozhi, D/o.Gopi,
rep. By her Father and Guardian Gopi
... 1st Respondent in CMA.1389/08

Minor Sandhiya,
D/o.Elumalai,
rep. By her father and guardina Elumalai
... 1st Responden in CMA.1389/08

Minor. Nithya,
D/o.Muthu, reb by her father and
guardian Muthu ... 1st respondent in CMA.No. 1390/08

Minor Nagarani, D/o.Elumalai,
rep. By her father and Guardina Elumalai
... 1st Respondent in CMA.No.1391/08

Minor . Vinothini, D/o.Ramu,
rep by her Father and Guardian Ramu

... 1st Respondent in CMA.No.1392/08

Minor Elina, D/o. Seshan,
rep by her father and guardian Seshan

... 1st Respondent in CMA.No. 1393/08

Minor Radhika, D/o. Mari,
rep by her Father and Guardian Mari.

... 1st Respondent in CMA. No. 1394/08

Minor Rohini, D/o.Devendran,
rep by her Father and Guardian Devendran

... 1st Respondent in CMA.No. 1395/08.

Minor Megala, D/o.Muniammal,
rep by her Mother and Guardian Muniammal

... 1st Respondent in CMA.No. 1396/08

Minor Barathi, D/o.Marimuthu,
rep by here Father and Guardian,
marimuthu

... 1st Respondent in Cma.No. 1397/08

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgement and decree made in M.C.O.P No. 318, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604 & 605/2006 respectively on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.V, Additional District Judge at Tiruvallur dated 29.06.2007.

For Appellant : Mr.M.Krishnamoorthy
in all CMAs

For Respondents : No appearance
in all CMAs

JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Manager, United India Insurance Co. Ltd., being as second respondent in the claim application, challenging the judgments and decrees made in M.C.O.P Nos. 318, 594, 595, 596, 579, 598, 599, 600, 601, 602, 603, 604, 605 of 2006 on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.V, Additional District Judge at Tiruvallur dated 29.06.2007.

2. The brief facts as averred in the claim applications are that on 16.06.2006 at 4.30 p.m, while the claimants were travelling in a Mini Bus belonging to the first respondent, bearing Registration No.TN59-N-0580 from Arani to Thachur, the driver of the said Mini bus in which the claimants were travelling, was driven by the driver in a rash and negligent manner, due to which the bus lost its control and capsized at the right side. The claimants along with other persons who were travelled in the Mini bus sustained injuries. Hence the claimants who sustained injuries claimed the compensation of Rs.1,00,000/- each.

3. The Tribunal, after assessing the documents and evidence placed before it, awarded the compensation under the following break-up details, in respect of each petitions:

S. No.	MCOP No.	amount awarded for			Total
		Injuries	Treatment/Other expenses	Pain and sufferings	
		Rs.	Rs.	Rs.	Rs.
1	318 of 2006	10,000	2,000	10,000	22,000
2	594 of 2006	8,000	3,000	8,000	19,000
3	595 of 2006	8,000	3,000	7,000	18,000
4	596 of 2006	5,000	3,000	5,000	13,000
5	597 of 2006	7,000	3,000	6,000	16,000
6	598 of 2006	7,000	3,000	8,000	18,000
7	599 of 2006	6,000	3,000	7,000	16,000
8	600 of 2006	7,000	3,000	7,000	17,000
9	601 of 2006	8,000	3,000	8,000	19,000
10	602 of 2006	6,000	3,000	7,000	16,000
11	603 of 2006	5,000	3,000	5,000	13,000
12	604 of 2006	6,000	3,000	5,000	14,000

S. No.	MCOP No.	amount awarded for			Total
		Injuries	Treatment/Ot her expenses	Pain and sufferings	
		Rs.	Rs.	Rs.	Rs.
13	605 of 2006	7,000	3,000	7,000	17,000

4. As against the said awards passed by the Tribunal, the present appeals have been filed by the second respondent / insurance Company. The appellant in each of the above Appeals, has aggrieved against the awards mainly stating that the decree of the Tribunal is contrary, the Insurer of the vehicle committed violation of policy and permit conditions, carried more than 40 passengers in the Insured Mini bus, whereas the permitted capacity was only 25 persons; the Tribunal also not considered the documentary evidence of Exs.R1 to R3, the copy of policy certificate, the permit of the Mini Bus and the investigation report of the Mini bus; the copy of the permit reveals that the capacity of Mini Bus is only 25 passengers and 2 employees, whereas there were averments in Ex. P1 / FIR which reveals that 40 persons were travelling in the bus, which in contravention to the permit conditions and the Tribunal have to fix the liability on the owner of the vehicle/Mini bus; hence, the Tribunal ought to have exonerated the appellant, as the insurer had committed violation of policy and permit conditions which resulted in the accident.

5. Heard the learned counsel for the Appellant/Insurance Company. Despite the names of the Respondent Nos.1 & 2 have been printed in the cause list, there is no representation on behalf of the respondents. Further the appeals are filed by the claimants with regard to the liability to pay compensation by the appellant Insurance Company. Hence, these Appeals are taken-up, on merits, without the presence of the respondents.

6. As regards the liability, the argument advanced by the appellant is that the appellant being the insurer of the Mini Bus had issued the policy. The Tribunal after verifying the documents and evidences placed before it, has fixed the liability on respondents 1 and 2 to pay the compensation to the claimant .

7. Ex. R1 / policy certificate shows the period of policy; Ex. R2 / permit reveals the number of the vehicle and the place of destination and starting point.

8. Based on the investigation report, negligence was fixed

on the driver of the Mini Bus. Hence the Tribunal gave a finding that both the respondents therein / Insurer & owner of the vehicle are liable to pay compensation.

9. A perusal of Ex.R1 policy certificate shows the type of vehicle, as stated, and also the seating capacity of the mini bus as 25. Ex. R2 permit reveals the passenger capacity as $25+2=27$, in all, and the type of the vehicle also mentioned as Mini Bus Service. Ex.R3 is the investigation report which reveals the fact that the vehicle involved in the accident was the Mini Bus, bearing registration number TN59-N-0580 and the vehicle was proceeding for Arani to Thachur on 16.06.2006. A further perusal of records reveals the fact that around 16.00 hours, the vehicle lost its control and got capsized, causing injuries to about 40 passengers and a case has been filed before Arani Police Station.

10. Further, in the observation also, it is clearly stated that seating capacity of the vehicle was 27 ($25+2$) in all, whereas around 40 passengers were inside the bus at the time of accident.

11. Hence from the above documents, it is very well proved that the vehicle involved in the accident belongs to the first respondent's Mini Bus. The seating capacity is $25+2=27$ in all whereas the investigation report reveals that there were 40 passengers travelling at the time of accident.

12. Hence, the vehicle which involved in the accident was driven by its driver in a rash and negligent manner and there are more number of persons travelled in the bus above than the seating capacity, thereby the second respondent/owner of the vehicle has violated the conditions of the policy. The policy certificate also reveals that the seating capacity of the vehicle as 25. Hence, the insurer of the said Mini Bus is liable to pay the compensation only to the extent of 25 persons and not beyond that.

13. It is also the argument of the appellant/Insurance company that this appellant is liable to pay the compensation only to the extent of 25 persons and for the remaining persons the owner of the vehicle is liable to pay the compensation. From the above documents, and also the facts discussed, the persons travelling in the Mini Bus are third parties and they are entitled to claim for compensation for the injuries sustained by them.

14. While considering the liability, the insurance company is liable to pay the compensation to all the persons and the

Trial Court merely directed the respondents therein to pay the compensation to the claimants.

15. With the above finding, these appeals are disposed of, with a direction that the insurance Company to pay the amount of compensation to the claimants and recover the same from the owner of the vehicle. No Costs. Consequently, connected Miscellaneous Petitions are also closed.

16. The appellant is directed to deposit the amount of compensation, as awarded by the Tribunal, along with interest at 9% per annum, from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to deposit the share of the minor claimants in a fixed deposit, in any one of the Nationalised Banks, initially for a period of 3 years and renewable thereafter, and the Interest accrued thereon shall be withdrawn by the claimant/first respondent directly from the bank. The share of the major claimants shall be withdrawn by them, as per the ratio of apportionment made by the claims Tribunal.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
(Fast Track Court)
No.V, Additional District Judge,
Tiruvallur .

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.Nos.1385 to 1397 of 2008

SAI (CO)
GN(29/10/2018)