IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.1028 to 1033 of 2012

C.M.A.No.1028 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondent

..vs..

1.Shanthi ... 1st Respondent/Petitioner
2.C.Ponnuswamy ... 2nd Respondent/Respondent

C.M.A.No.1029 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondents

..vs..

Govindammal ... 1st Respondent/Petitioner
2.C.Ponnuswamy ...2nd Respondent/Respondent

C.M.A.No.1030 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondent

..vs..

1.R.Tamizh Selvi ... 1st Respondent/Petitioner
2.C.Ponnuswamy ..2nd Respondent/1st Respondent

C.M.A.No.1031 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondents

..vs..

1.K.Ranganayaki ... 1st Respondent/Petitioner
2.C.Ponnuswamy ..2nd Respondent/1st Respondent

C.M.A.No.1032 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondents

..vs..

1.K.Raghu ... 1st Respondent/Petitioner
2.C.Ponnuswamy ..2nd Respondent/1st Respondent

C.M.A.No.1033 of 2012

United India Insurance Company Ltd.,
No.19, Andiappa Gramani Street,
Royapuram, Chennai-13. ... Appellant/2nd Respondents

..vs..

1.K.Sekar ... 1st Respondent/Petitioner
2.C.Ponnuswamy ..2nd Respondent/1st Respondent

PRAYER IN C.M.A.NO.1028 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3763 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

PRAYER IN C.M.A.NO.1029 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3764 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

PRAYER IN C.M.A.NO.1030 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3767 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

PRAYER IN C.M.A.NO.1031 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3768 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

PRAYER IN C.M.A.NO.1032 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3769 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

PRAYER IN C.M.A.NO.1033 OF 2012: This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal order dated 02.06.2011 made in MCOP.No.3770 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai.

For Appellant	:	Mr.D.Bhaskaran (in All CMAs)
For Respondents	:	Mr.K.Surya Narayanan for M/s.M.Saravanan (Ist respondent in all appeals)

COMMON JUDGMENT

Being aggrieved over the finding of the Tribunal dated 02.06.2011 made in MCOP.Nos.3763, 3764, 3767, 3768, 3769 and 3770 of 2007 on the file of the Motor Accident Claims Tribunal, IV Small Cause Court, Chennai the second respondent-Insurance Company has come forward with these present appeals seeking to set aside the finding of the Tribunal.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioners is that on 29/30.07.2007 at about 00.05 hours, while the injured petitioners were travelling in a share Auto bearing Registration No.TN-05-T-1501, from Koyambedu to Wannerpet, the driver of the auto drove the vehicle in a rash and negligent manner dashed against the central median and capsized while going in the Narayana Guru Salai, Chennai-7, causing injuries to the petitioners in the Claim Petition Nos. 3763, 3764, 3767, 3768, 3769 and 3770 of 2007. Due to the injuries suffered by them, they are unable to attend their regular avocation. Hence, the petitioners sought for compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petitions, the 2nd respondent-Insurance company filed counter contending that the share auto bearing Registration No.TN-05-T-1501 was insured with

the second respondent by the first respondent to provide insurance coverage for only three persons and as the first respondent carried more than the covered persons in the vehicle, the second respondent is not liable to pay any compensation to the petitioners who travelled as passengers in the auto. The Second respondent-Insurance Company also denied the claim of the petitioners about the manner in which the accident occurred. The second respondent also contended that the insured auto was not having proper fitness certificate and as such the second respondent is not liable to pay compensation. The driver of the auto belonging to the first respondent was not possessing any valid driving licence at the time of accident and as such they are not liable to pay any compensation to the petitioners. The age, occupation and income as claimed by the petitioners is denied. The claim in respect of injuries suffered and the treatment taken by them are not admitted. The accident took place, only due to the negligence of the auto driver who carried more than permitted persons in the vehicle as passengers and the same amounts to violation of policy condition. Thus, the second respondent-Insurance Company contended that they are not liable to pay any compensation to the petitioners. The claim of the petitioners under different heads is exorbitant. Thus, the Second respondent-Insurance Company sought for dismissal of the claim petitions.

5. Before the Tribunal, all the cases were taken up for joint trial and disposed of by a common order dated 02.06.2011. Before the Tribunal, the petitioners examined P.W.1 to P.W.8 and produced documents Ex.P1 to Ex.P20 to substantiate their claim. On the side of the respondents, R.W.1 to R.W.3 were examined and Ex.R1 to R5 were produced.

6. The Tribunal, on the basis of available materials on record, found the negligence on the part of the first respondent auto driver alone caused the accident and as the owner and insurer of the offending vehicle viz., the respondents are liable to pay compensation to the petitioners. Being aggrieved over the said finding of the Tribunal, the second respondent-Insurance Company has come forward with the present appeals.

7. I have heard the learned counsel appearing for the second respondent/appellant-Insurance Company and the learned counsel appearing for the petitioners/claimants in all the appeals and perused the materials available on record.

8. The learned counsel appearing for the appellant/Insurance company contends that the Tribunal failed to note that 12 persons travelled in the Auto while the permitted seating capacity was 3 + 1 only. The Tribunal also failed to note that the first respondent is the owner cum driver of the

said auto. The Tribunal failed to note that in view of the violation of permit as well as the Insurance Policy condition, the second respondent Insurance Company cannot be directed to pay the compensation amount to the petitioners. The Tribunal ought to have fixed the compensation amount on the basis of premium collected only. The Tribunal also failed to consider that the Doctor who issued disability certificate has not conducted necessary examination of the petitioners and also has not treated them. The amount awarded by the Tribunal in the above said petitions are very exorbitant. The second respondent is not liable to pay any amount to the petitioners, due to the violation of policy and permit condition by the first respondent owner/driver of the offending vehicle. Thus, the second respondent Insurance company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9. On the other hand, the learned counsel appearing for the petitioners/claimants contended that there is no violation of policy condition and the insurer cannot escape its liability on technical grounds. The Tribunal on appreciation of the evidence has passed just and fair award, which needs no interference. As such, the learned counsel appearing for the petitioners/claimants sought for dismissal of the appeals.

10. The main issue raised by the second respondent Insurance Company is that they are not liable to pay compensation as there was violation of policy condition by the first respondent. The quantum of award passed by the Tribunal is not seriously challenged before appellate Forum. The injured petitioners who deposed as P.W.1 to P.W.6 clearly stated that they were going in the first respondent share auto from Koyambedu, on 29/30.07.2007 around 12.00 mid night and as they were going in the Narayana Guru Salai, opposite to Chennai Corporation Play ground, the auto driver, due to high speed, lost control and dashed against the central median due to which the auto capsized, resulting in the petitioners suffering grievous injuries. The police also registered a case as evidenced by Ex.P1 First Information Report against the driver of the auto only. The contents of Ex.P1 First Information Report corroborate the oral version of the accident given by P.W.1 to P.W.6, the petitioners in different O.Ps. The first respondent owner cum driver of the offending vehicle has not come forward to depose before the Tribunal, nor has he examined any other witnesses to contradict the claim of the petitioners. The witness examined by the second respondent insurance company does not say anything about the manner in which the accident is occurred. As such, the Tribunal rightly concluded on the basis of P.W.1 to P.W.6 evidences as well as the contents of Ex.P1 First Information Report that the rash and negligent driving by the first respondent vehicle driver alone caused the accident.

11. The petitioners/claimants admittedly travelled in the share auto belonging to the first respondent. According to the second respondent Insurance Company, the policy coverage was only for 3 + 1, the driver to be carried in the said auto bearing Registration No.TN-05-T-1501. But, more than the permitted persons was carried on the fateful day and as such the first respondent committed violation of policy condition. The investigator of the second respondent Insurance Company who deposed as R.W.1 produced his investigation report as Ex.R1 and copy of the Insurance Policy as Ex.R2. According to him, the vehicle was insured under the package policy and coverage was provided for three passengers and driver of the vehicle. R.W.1 also stated that in the complaint to the police itself it is clearly stated that 12 passengers travelled in the share auto. R.W.1 also produced the copy of the charge sheet laid by the police along with his investigation report. The Staff of the second respondent who deposed as R.W.2 also stated that the offending vehicle was insured with them for the period from 18.09.2006 to 17.09.2007 and the policy coverage was for three passengers + driver. Thus, it is clear from Ex.R5 Extract of RC and permit as well as Ex.R1 investigation report and Ex.R2 copy of Insurance Policy that the first respondent vehicle was permitted to carry 3 + 1 persons under the insurance coverage. However, as stated earlier, it is clear from the available materials that the vehicle carried more than the permitted number of persons.

12. Pointing it out, the learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal erred in fixing the negligence on the part of the first respondent driver and directing the Insurance Company to pay the compensation to the injured petitioners. However, as stated earlier, the Tribunal has rightly held that the negligence of the first respondent vehicle driver alone resulted in the accident. The same is just and proper. For the reasons stated earlier, the only issue to be considered is whether the second respondent Insurance company can be directed to pay the amount on behalf of the first respondent in view of the violation of policy conditions committed by the first respondent. The Tribunal after analysing the evidence rightly held on the basis of Apex Court Ruling reported in 2011 ACJ 917 in UNITED INDIA INSURANCE CO. LTD.,Vs. K.M.POONAM AND OTHERS, that even if there is violation of policy condition, the second respondent cannot escape from his liability, but after paying the award amount, the same can be recovered from the owner of the vehicle. In the said ruling also, the vehicle which was authorised to carry only 5 passengers, besides the driver but it carried 15 passengers and met with an accident. In such circumstances, the Apex Court held that the liability of the Insurance Company is limited to

five persons + 1 driver as per the policy coverage, but, the Insurer is directed to pay the award amount to all the claimants and to recover the amount in excess of the liability due under the policy coverage from the owner of the vehicle. In the said Ruling, it is held as follows:

> "24. The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present ase, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle. In the instant case, any of the persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could then recover it from the insured owner of the vehicle.
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> 25. As mentioned herein before, in the instant case, the insurance policy taken out by the owner of the vehicle was in respect of six passengers, including the driver, travelling in the vehicle in question. The liability for payment of the other passengers in excess of six passengers would be that of the owner of the vehicle who would be required to compensate the injured or the family of the deceased to the extent of compensation awarded by the Tribunal.
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> 26. Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we, in this

case, are faced with the same problem as had surfaced in Anjana Shyam's case (supra). The number of persons to be compensated being in excess of the number of persons who could validly be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case (supra) and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect to their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amounts payable in respect of the persons covered by the Insurance Policy from the owner of the vehicle, as was directed in Baljit Kaur's case.

27. In other words, the Appellant Insurance Company shall deposit with the Tribunal the total amount of the amounts awarded in favour of the awardees within two months from the date of this order and the same is to be utilized to satisfy the claims of those claimants not covered by the Insurance Policy along with the persons so covered. The Insurance Company will be entitled to recover the amounts paid by it, in excess of its liability, from the owner of the vehicle, by putting the decree into execution. For the aforesaid purpose, the total amount of the six Awards which are the highest shall be construed as the liability of the Insurance Company. After deducting the said amount from the total amount of all the Awards deposited in terms of this order, the Insurance Company will be entitled to recover the balance amount from the owner of the vehicle as if it is an amount decreed by the Tribunal in favour of the Insurance Company. The Insurance Company will not be required to file a separate suit in this regard in order to recover the amounts paid in excess of its liability from the owner of the vehicle."

13. It is therefore clear from the above said ruling relied upon by the petitioners/claimants that even if the vehicle carried more than the permitted persons, the insurer is liable

to pay the entire award amount and the excess amount can be subsequently recovered from the owner of the vehicle.

14. The Tribunal in fact has considered the same and given a finding while answering Point No.2 in Para 8 of his judgment, as such, this Court finds that there is no error in the conclusion arrived at by the Tribunal. Therefore, the claim of the respondent-Insurance company that they are not liable to pay the award amount as directed by the Tribunal is not acceptable and the same has to fail. As stated earlier, both parties have not seriously disputed the quantum of award passed by the tribunal. Hence, the quantum of award passed by the Tribunal in respect of the petitioners/claimants are is hereby confirmed.

15. In the result, C.M.A.s are dismissed. The appellant / Insurance Company is directed to deposit the award amount in all the claim petitions firstly within period of eight weeks from the date of receipt of copy of this order and then they are permitted to recover the amounts paid by them, in excess of its liability under Ex.R2 Policy, from the owner of the vehicle involved in the accident. On such deposit, the petitioners/claimants in all the claim petitions are permitted to withdraw the entire award amount by filing necessary application before the Tribunal in accordance with law.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
The IV Judge,
Court of Small Causes,
Chennai.

+6cc to Mr.K.SURYA NARAYANAN,Advocate,S.R.No. 21237 TO 21242

C.M.A.Nos.1028 to 1033 of 2012

VG I(CO)
TR(31/07/2018)