IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.1152 to 1155 of 2007
& M.P.Nos.1 to 1 of 2007

The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Dharmapuri ... Appellant in all / CMAs/2nd Respondent

..vs..

1. Muniappan ... R-1 in CMA No.1152/2007
2. Lakshmanan ... R-1 in CMA No.1153/2007
3. Chitra ... R-1 in CMA No.1154/2007
4. Gangayya Naidu ... R-1 in CMA No.1155/2007
2. A.Kumar ... R-2 in all CMAs
.. Petitioner & 1st Respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the awards and decrees, dated 22.12.2006 made in M.C.O.P.Nos.845, 846, 847 of 2005 and 96 of 2006, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate No.2, Dharmapuri at Krishnagiri District.

For Appellant in all CMAs : Mr. Vijayaraghavan
For Respondents in all CMAs : No Appearance.

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the quantum of compensation awarded by the Claims Tribunal.

2. According to the case of the claimants / respective first respondent(s) herein, on 13.02.2005, 15 persons travelled in the goods vehicle bearing Registration No.TN24-7695, which was insured with the appellant herein. During travel, the vehicle got capsized in the road and the accident had happened. The claimants sustained injuries and took treatment at

Government Hospital, Krishnagiri, and thereafter at private hospitals. In respect of the injuries sustained, they claimed sums of Rs.1,50,000/-, Rs.1,00,000/-, Rs.1,00,000/- and Rs.1,00,000/-, respectively, as compensation.

3. As against the claims made, the Tribunal has awarded sums of Rs.37,300/-, Rs.13,500/-, Rs.44,180/- and Rs.19,700/-, respectively, as total compensation. Challenging the quantum as excessive, the Insurance Company has filed the present Appeals.

4. Before the Tribunal, on the side of the claimants P.Ws.1 to 5 were examined and Exs.P-1 to P-14 were marked and on the side of the Insurance Company, R.Ws.1 and 2 were examined and Exs.R-1 and R-2 were marked.

5. The Tribunal, based upon the facts, materials and evidence has arrived at the said sums as compensation with the following breakup details:

Head	MCOP No.845/05	MCOP No.846/05
Loss of future earnings	28,800.00	7,800.00
Transportation expenses	300.00	300.00
Damage to cloths	200.00	200.00
Extra Nourishment	4,000.00	2,600.00
Pain and sufferings	4,000.00	2,600.00
Total	37,300.00	13,500.00

Head	MCOP No.847/05	MCOP No.848/05
Loss of future earnings	38,880.00	14,400.00
Transportation expenses	300.00	300.00
Damage to cloths	200.00	200.00
Extra Nourishment	2,600.00	2,400.00
Pain and sufferings	2,600.00	2,400.00
Total	44,180.00	19,700.00

6. The Tribunal, by a common judgment, dated 22.12.2006, has ultimately directed the Insurance Company to pay the said compensation amount to the claimants / first respondent(s) by elaborate reasonings. The findings with regard to the liability and quantum are challenged in these Appeals.

7. The learned counsel appearing for the Insurance Company / appellant herein submitted that the injured travelled in the Goods Carrying Vehicle as gratuitous passengers and hence, the Insurance Company cannot be fastened with the liability to pay the compensation. The learned counsel further submitted that the Tribunal ought to have followed the decision reported in 2003 ACJ 1 [New India Assurance Co. Ltd., Vs. Asha Rani] and dismissed the Claim Petitions.

8. This Court has considered the submissions made by the learned counsel for the appellant and perused the materials available on record.

9. At the outset, it has to be pointed out that under MV Act 1939, the leading decision is reported in 1999 ACJ 1 [supra] and it was held that the Insurer was not required to cover the risk to gratuitous occupants carried in a goods vehicle as well as those carried for hire or reward in such vehicles. Only such of those persons who were workmen under WC Act 1923 were required to be covered under Sec.95 of the Act.

10. However, in respect of MV Act, 1988 the leading judgment is reported in 2003 ACJ 1 (SC) [supra] wherein the legal position with regard to gratuitous occupants carried in a goods vehicle, in respect of accidents after 01.07.1989 before 14.11.1994 and after 14.11.1994 was clarified. It was held that before 14.11.1994 gratuitous occupants and those carried for hire or reward after 01.07.1989 were not required to be covered. In respect of accidents after 14.11.1994, it has been held that owners of goods or representatives of owner of goods accompanying them the goods were held entitled for coverage. Those carried for hire or reward were neither covered under MV Act, 1939 nor under MV Act, 1988.

11. In the case reported in 2006 (1) MLJ 154 (Mad) [United India Insurance Co. Ltd., Vs. Selvam], following the decision of Supreme Court in 2004 (2) SCC 1 [Baljit Kaur's Case] it has been held that in respect of accidents prior to 06.01.2004, the insurance companies shall have to pay and recover. In respect of accidents after 06.01.2004 the Insurance Companies can avoid liability to such persons in toto.

12. Going further, during 2017, one step ahead, in the case of Manuara Khatun vs. Rajesh Kr. Singh, reported in AIR 2017 SC 1204, the Hon'ble Supreme Court has held that the deceased who was travelling in the goods vehicle can be termed as a gratuitous passenger and not covered under the insurance policy and, therefore, Insurance Company was exonerated, but directed to pay the amount of compensation to the claimants with the right to recover the same from the insured. Similar view has been taken in the case of Lal Singh Marabi v/s N.I. Com., reported in 2017 (5) SCC 82.

13. Added to the above, in a recent Division Bench decision of this Court reported in 2018 (2) TN MAC 731 (DB) (Bharathi AXA General Insurance Co. Ltd. v. Anandi and two others) among other things and after analyzing all the decisions on the issues of 'gratuitous passenger' and 'pay and recover', the Division Bench has observed as follows:-

> "52. In fine, all the Appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle., viz., the first respondent in all the Original Petitions and the Award against the Insurance Company will stand set-aside. However, in view of the fact that the claimants are not before us, we do not impose any costs. ....."

14. Suffice to point out that the said decisions squarely apply to the facts of the case on hand. In these cases, it is the admitted case of both sides that the accident had taken place on 13.02.2005. Hence, it is crystal clear that the Insurance Company is liable to pay and recover the compensation amount from the insured. Hence, the contention of the appellant herein is nullified.

15. In the cases on hand, the Tribunal based on the materials, evidence and documents produced has arrived at the just compensation to be payable, as stated supra, by elaborate reasonings. The reasonings recorded by the Tribunal are based on probabilities and weight of evidence, which in the opinion of this Court, are perfectly justified. Hence, the findings of the Tribunal

are confirmed as such, in addition to pay and recovery issue. The compensation amount(s) awarded by the Tribunal along with interests and costs are hereby confirmed.

16. In the result, this Civil Miscellaneous Appeals, filed by the Insurance Company, are disposed of, directing the Insurance Company / appellant(s) herein to pay the compensation to the claimants / first respondent herein (at first), with liberty to recover the amount from the Insurer / owner of the vehicle / A.Kumar. No costs. Consequently, connected Miscellaneous Petitions are closed.

17. The appellant-Insurance Company is directed to deposit the award amounts along with interests and costs, 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 shall transfer the amount to the Savings Bank Account(s) of the claimants / injured / first respondent (s) herein through RTGS, one week thereafter.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1.The Motor Accident Claims Tribunal, Chief Judicial Magistrate No.2, Dharmapuri at Krishnagiri District.

2.The Section Officer,
V.R.Section, Madras High Court, Chennai 104

+4ccs to Mr.Vijayaraghavan,Advocate SR.No. 50768,50789,
50790,50791

C.M.A.Nos.1152 to 1155 of 2007
& M.P.Nos.1 to 1 of 2007

A.SK(12/11/2019)