IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2019
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.2178 to 2180 of 2008 and M.P.Nos.1, 1 and 1 of 2008
and
C.M.A.Nos.800 to 803 of 2009 and M.P.Nos.1, 1, 1 and 1 of 2009

C.M.A.No.2178 of 2008:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ... Appellant/2nd Respondent

Vs

1.Ramasamy ...1st respondent/Petitioner

2.E.Sakthivel ...2nd Respondent/
1st Respondent

C.M.A.No.2179 of 2008:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ... Appellant/2nd Respondent

Vs

1.Thathagounder ...1st Respondent/Petitioner

2.E.Sakthivel ...2nd Respondent/
1st Respondent

C.M.A.No.2180 of 2008:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ... Appellant/2nd Respondent

Vs

1.Palaniammal ...1st Respondent/Petitioner

2.E.Sakthivel ... 2nd Respondent/Respondent

C.M.A.No.800 of 2009:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ...Appellant/2nd Respondent

Vs

1.K.Govindammal ...1st Respondent/Petitioner

2.E.Sakthivel ...2nd Respondent/Respondent

C.M.A.No.801 of 2009:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ... Appellant/2nd Respondent

Vs

1.Padmini ...1st Respondent/Petitioner

2.E.Sakthivel ...2nd Respondents/Respondent

C.M.A.No.802 of 2009:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ... Appellant/2nd Respondent

Vs

1.Chinnaponnu ...1st Respondent/Petitioner

2.E.Sakthivel ...2nd Respondent/Respondent

C.M.A.No.803 of 2009:

M/s.National Insurance Co.Ltd.,
Branch-1, P.B.No.15/1
Govindasamypillai Street
Near Old Bus Stand
Salem-636 001. ...Appellant/2nd Respondent

Vs

1.Padma ...1st Respondent/Petitioner

2.E.Sakthivel ...2nd Respondent/Respondent

C.M.A.No.2178 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1613 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.2179 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1615 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.2180 of 2008 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1616 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.800 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1467 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.801 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1468 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.802 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1469 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

C.M.A.No.803 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 14.06.2006 made in MCOP No.1470 of 2003 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Salem.

For Appellant in all appeals : Mr.S.Arunkumar

For Respondents in all appeals : Mr.M.S.Sampath for R1 in C.M.A.Nos.2178 to 2180 of 2008

COMMON JUDGMENT

The facts of the case in brief, are as follows:

On 19.01.2003 at about 8.30 a.m., the first respondent in these appeals have travelled in the van bearing Reg.No.TN-33-A-1811 owned by the second respondent in these appeals and insured with the appellant Insurance Company, from Chandrapillai Valasu, Salem District to go to Kandasamy Pudur. The said van was driven by its driver in a rash and negligent manner. When the van reached near Ariyapalayam Branch Road, the driver of the van, in the process of negotiating a curve, lost control over the vehicle and due to the same, the van turned turtle. The first respondent in these appeals sustained grievous injuries. They filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA No.	MCOP No.	Amount of compensation (Rs.)
2178 of 2008	1613/2003	17,000/-
2179 of 2008	1615/2003	10,000/-
2180 of 2008	1616/2003	10,000/-
800 of 2009	1467/2003	18,870/-
801 of 2009	1468/2003	10,000/-
802 of 2009	1469/2003	10,000/-
803 of 2009	1470/2003	11,000/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions.

2.Challenging the awards passed by the Tribunal, the appellant Insurance Company has come up with these appeals.

3.The learned counsel for the appellant Insurance Company has submitted that the Tribunal has erred in holding that the Insurance Company is liable to pay compensation to the claimants. He submitted that the second respondent /owner of the van had violated the Law, Permit and Policy conditions by permitting 70 unauthorised passengers to be carried in a goods vehicle. He also submitted that the Tribunal failed to note that only for the purpose of claiming compensation from the Insurance Company, it has been alleged by the claimants that they travelled as passengers accompanying the goods. The learned counsel relied upon the decision of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), in support of his contention.

4.The learned counsel for the claimants in C.M.A.Nos.2178 to 2180 of 2008 has submitted that the Tribunal has considered the materials and evidence in proper perspective and has awarded the just, fair and reasonable compensation and also correctly directed the Insurance Company to pay compensation to the claimants and thereafter recover the same from the owner of the vehicle, as per the law laid down by this Court. Hence the impugned judgment of the Tribunal need not be interfered with, by this Court, according to the learned counsel.

5.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the claimants in C.M.A.Nos.2178 to 2180 of 2008 and perused the materials available on record carefully and meticulously.

6.The finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the van bearing Reg.No.TN-33-A-1811 owned by the second respondent in these appeals, is not disputed by both the sides.

7.It was put forth on behalf of the Insurance Company before the Tribunal that the van is a goods carriage vehicle and the injured have travelled in the van as unauthorised passengers. As per the insurance policy, the driver or owner of the van has no right to carry passengers in the goods carriage. It was submitted that 70 persons travelled in the van. Allowing such 70 persons to travel in the van by the driver, is against the terms and conditions of the insurance policy and hence the Insurance Company is not liable to pay any compensation to the claimants.

8.Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, the Tribunal relied upon the decision of this Court in the case of United India Insurance Co.Ltd. v. P.Jaya and others, reported in 2006(1) CTC 173 and directed the Insurance Company to pay compensation to the claimants and then recover the same from the owner of the vehicle.

9.But the fact remains that there was violation of policy conditions by the owner of the vehicle. Hence, the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB), which has been relied upon by the learned counsel for the appellant Insurance Company, will come to their aid.

10.The Hon'ble Supreme Court held in the case of Oriental Insurance Co.Ltd. v. Brij Mohan & Ors., reported in 2007 (2) TN MAC 66 (SC) : 2007 (7) SCC 56, that the intention of the Parliament was that the words “any person” occurring in Section 147 will not cover all persons, who are travelling in a goods carriage in any capacity whatsoever. The Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi (cited supra) has taken note of this aspect and dealt with the issue in detail, by taking note of the various judgments of the Hon'ble Supreme Court and this Court and finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation and to recover the same from the owner of the vehicle, is not correct. The Division Bench has also observed that even though in many cases, the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident, the said factual position alone cannot impel the Court to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court.

11.In the case on hand, it is very clear that there was violation of policy conditions and the injured have travelled as unauthorised passengers. But the Tribunal has ordered for pay and recovery, which, according to this Court is not correct, in view of the law laid down by the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. v. Aandi, reported in 2018 (2) TN MAC 731 (DB) (cited supra). Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants.

12.In the result, the appeals are allowed in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation in these appeals, is affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stand set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

13.If any amounts had already been deposited by the Insurance Company, the Insurance Company is at liberty to withdraw the same by making proper application before the Tribunal.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

KM

To

1.The Motor Accidents Claims Tribunal,
Principal District Judge, Salem.

2.The Section Officer,
VR Section, Madras High Court.

+1 cc to M/s.S.Arunkumar Advocate sr67642

C.M.A.Nos.2178 to 2180 of 2008
and M.P.Nos.1, 1 and 1 of 2008
and
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