



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

C.M.A.Nos.13, 14, 15 and 16 of 2009
and M.P.Nos.1, 1, 1 and 1 of 2009

Royal Sundaram Alliance Insurance Co. Ltd.,
Nos.45 and 46, Sundaram Towers
Whites Road, Chennai 600 014

... Appellant/2nd Respondent
in all the appeals

..VS..

1.Kaliyamurthy ... 1st Respondent/Claimant
2.Pandithurai ... 2nd Respondent/1st Respondent in CMA 13/2009

1.Manthiri 1st Respondent/Claimant
2.Pandithurai ... 2nd Respondent/1st Respondent in CMA 14/2009

1.Sundaram ... 1st Respondent/Claimant
2.Pandithurai ... 2nd Respondent/1st Respondent in CMA 15/2009

1.Dharmalingam ... 1st Respondent/Claimant
2.Pandithurai ... 2nd Respondent/1st Respondent in CMA 16/2009

Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 31.03.2008, made in M.C.O.P.Nos.11,12,13 and 14 of 2006 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Ariyalur.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.A.A.Venkatesan (R1)

J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the liability to pay compensation to the injured.

2. The case in brief is as follows:-

On 04.08.2005, the claimants / first respondent in each of these appeals, along with some others were travelling in an Auto bearing No.TN 49-T-8312 to go to Vadugarpalayam village to attend a funeral function, after finishing their agricultural



work. While the vehicle was coming near East Erikkarai, Kadarankondan, the vehicle driver has driven the same in a rash and negligent manner and turned the vehicle without reducing the speed and due to the same, the vehicle capsized on the left side. Due to the impact, the claimants have sustained multiple injuries all over the body. A criminal case has been registered against the load auto driver in Jayamkondam Police Station Crime No.407 of 2005 for the offences under Sections 279 and 337 IPC. The second respondent herein in all the appeals, is the owner of the vehicle. The injured claimants filed Claim Petitions in M.C.O.P.Nos.11, 12, 13 and 14 of 2006 claiming compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.9,000/-, Rs.8,000/-, Rs.53,000/- and Rs.76,000/- respectively with interest at the rate of 7.5% per annum from the respective dates of petitions. The Tribunal has directed the Insurance Company to pay the compensation amounts to the claimants and recover the same from the owner of the vehicle, on the ground of violation of policy conditions by the owner of the vehicle.

3.The learned counsel appearing for the appellant Insurance Company has submitted that the accident took place due to the rash and negligent driving of the driver of the vehicle owned by the second respondent. It is also submitted that all the claimants travelled in the goods carriage ie., in the load auto only as unauthorised passengers. Hence, there is a clear violation of the policy conditions. Moreover, the same is elicited in the FIR also. Pleading so, the learned counsel seeks to set aside the award passed by the Tribunal. However, the learned counsel has not disputed the quantum of compensation awarded by the Tribunal.

4.Per contra, the learned counsel for the claimants in all the appeals supported the award passed by the Tribunal and submitted that the Tribunal has considered all the material evidences placed before it and passed the impugned awards, and hence no interference is called for.

5.The second respondent in all the appeals is not ready in notice for want of correct address. It is further seen that no affidavit of service was filed by the appellant, for having served private notice to the respondents.

6.This Court perused the materials placed on record and considered the submissions made on behalf of the learned counsel for the appellant as well as the claimants.

7.According to the policy conditions, the driver as well as one loadman are entitled to travel in a goods vehicle. Admittedly in the present case, the claimant in CMA No.16 of



2009 alone was permitted to travel along with the goods vehicle. However, the driver of the vehicle had unauthorisedly permitted the other passengers also to travel in the goods vehicle. In the case on hand, it is very clear that there was violation of policy conditions. But the Tribunal has ordered the Insurance Company to pay the compensation and recover the same from the owner of the vehicle, 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). Hence, this Court holds that the appellant-Insurance Company is not liable to pay any compensation to the claimants / first respondent in Civil Miscellaneous Appeal Nos.13, 14 and 15 of 2009. Accordingly, C.M.A.Nos.13 to 15 of 2009 are allowed, in respect of the question of liability of the Insurance Company to pay the compensation. No costs. Consequently, the connected miscellaneous petitions are closed. The quantum of compensation in these appeals, are affirmed and there will be awards only against the owner of the vehicle and the awards against the Insurance Company stands set aside. 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.

8.In so far as CMA No.16 of 2009 (MCOP No.14 of 2006) is concerned, since the claimant in the said appeal has travelled as an authorised passenger along with the goods, the Insurance Company has to pay the compensation to the claimant, as the entire liability rests with the Insurance Company. Hence, while confirming the quantum of compensation awarded by the Tribunal as just and reasonable, the appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal. The direction of the Tribunal granting the liberty of pay and recovery to the Insurance Company is set aside. C.M.A.No.16 of 2009 is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KST



To

1. Motor Accident Claims Tribunal,
Sub Judge, Ariyalur.

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

+4cc to Mr. N. Vijayaraghavan, Advocate, S.R.No. 73062, 73060,
73059, 73061

+1cc to Mr. A. A. Venkatesan, Advocate, S.R.No. 72421

C.M.A. Nos. 13, 14, 15
and 16 of 2009

NR (CO)
CB (16/08/2021)