

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.2068 to 2071 of 2010

and

M.P.Nos.1 to 1 of 2010

M/s. United India Insurance Company Limited,
T.P.Claims Cell,
No.37, Anna Salai,
Chennai - 600 002.

... Appellant

(in all C.M.As)/2nd Respondent

.Vs.

1.Kanimozhi

... 1st Respondent

(in C.M.A.No.2068 of 2010)/
Claimant

1.Raja

... 1st Respondent

(in C.M.A.No.2069 of 2010)/
Claimant

1.Porkodi

... 1st Respondent

(in C.M.A.No.2070 of 2010)/
Claimant

1.Babu @ Vimal Kumar

... 1st Respondent

(in C.M.A.No.2071 of 2010)/
Claimant

2.R.Mohandoss

... 2nd Respondent

(in all C.M.As)/1st respondent

(R2 set exparte in the Lower Court)

Prayer in C.M.A.No.2068 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.01.2009 passed in M.C.O.P.No.116 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri.

Prayer in C.M.A.No.2069 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.01.2009 passed in M.C.O.P.No.117 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri.

Prayer in C.M.A.No.2070 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.01.2009 passed in M.C.O.P.No.118 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri.

Prayer in C.M.A.No.2071 of 2010: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 20.01.2009 passed in M.C.O.P.No.119 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri.

For Appellant : Mr.C.Paranthaman
(in all C.M.As)
For R1 : Mrs.M.Malar
(in all C.M.As)
For R2 : No appearance
(in all C.M.As)

C O M M O N J U D G M E N T

The appellant / United India Insurance Company Limited is the second respondent in M.C.O.P.Nos.116 to 119 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri. The first respondent in all the C.M.As filed the above said claim petitions under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.1,00,000/-, Rs.2,00,000/-, Rs.1,00,000/- and Rs.2,00,000/- respectively for the injuries sustained by them in a road accident that took place on 09.01.2006.

2. The case of the claimants is that on 09.01.2006, at about 08.30A.M. the claimants were travelling in a Mahendra Champion auto bearing Registration No.TN 05 M 1405 belonging to the second respondent and insured with the appellant / United India Insurance Company Limited. According to the claimants, they were proceeding towards Chozhavaram from Kannigaipair Village and when the auto was nearing Manjankaranai Village, the driver of the auto drove the vehicle rashly and negligently as a

result of which, the auto fell into a pit near the road and the claimants sustained injuries all over their body. According to the claimants, the rash and negligent driving of the driver of the auto belonging to the second respondent was the cause of the accident and that since the said auto was insured with the appellant / United India Insurance Company Limited, the owner of the auto and the insurer are liable to pay compensation jointly and severally.

3. The second respondent / owner of the auto remained absent before the Tribunal and therefore, he was set ex-parte. The appellant / United India Insurance Company Limited, contested the claim petitions on all the grounds available to the insured. The learned Additional District Judge, Fast Track Court No.IV, Ponneri, while awarding compensation of Rs.73,000/-, Rs.68,000/-, Rs.54,500/- and Rs.91,000/- together with interest at the rate of 7.5% per annum to the claimants, concluded that the liability of the appellant / United India Insurance Company Limited is joint and several. Aggrieved over the orders passed by the Tribunal, the appellant / United India Insurance Company Limited has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.C.Paranthaman, learned counsel appearing for the appellant / United India Insurance Company Limited contended that though the seating capacity in the auto is 2 + 1 (including driver) nearly 4 persons travelled in the vehicle and therefore the Tribunal was wrong in fastening the liability on the appellant / United India Insurance Company Limited to pay the compensation.

5. No appearance on behalf of the second respondent / owner of the vehicle.

6. In the decision of Royal Sundaram Alliance General Insurance Company Limited v P. Ayyakannu and another reported in 2009 (5) MLJ 707, it has been held that the expression "any passenger" found in Section 147 (1) (b) (ii) of the Motor Vehicles Act, 1988 must be understood as passenger authorised to be carried in the vehicle and "use of the vehicle" as permitted use of the vehicle. It is further held that affording of insurance for more number of passengers than permitted would be illegal and that as per Rule 236 of Motor Vehicles Rules, no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the instant case, the Registration Certificate of the vehicle shows that the number of persons who can be accommodated in the vehicle is 3. Therefore, the Tribunal was wrong in directing the

appellant / United India Insurance Company Limited to pay compensation to all the 4 claimants. Therefore the claimants in M.C.O.P.Nos.116 and 119 of 2006 alone are entitled to get compensation from the owner of the vehicle / second respondent and the appellant / United India Insurance Company Limited together with interest at the rate of 7.5% per annum. As far as the claimants in M.C.O.P.Nos.117 and 118 of 2006 are concerned, the owner of the auto is directed to pay the compensation amount with interest at the rate of 7.5% per annum and the appellant / United India Insurance Company Limited is exonerated from paying the compensation amount. The appellant / United India Insurance Company Limited is also at liberty to withdraw the amounts already deposited by them in the aforesaid 2 claim petitions.

7. In the result,

(i) C.M.A.Nos.2068 and 2071 of 2010 are dismissed and C.M.A.Nos.2069 and 2070 of 2010 are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(ii) The appellant / United India Insurance Company Limited is directed to pay the compensation of Rs.73,000/- and Rs.91,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.116 and 119 of 2006 respectively on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri within a period of four weeks from the date of receipt of a copy of this order.

(iii) The second respondent / owner of the vehicle is directed to pay the compensation of Rs.68,000/- and Rs.54,500/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.117 and 118 of 2006 respectively on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri within a period of four weeks from the date of receipt of a copy of this order.

(iv) The orders passed by the Tribunal fastening liability on the Insurance Company in M.C.O.P.Nos.117 and 118 of 2006 are set aside.

(v) The appellant / United India Insurance Company Limited is exonerated from paying the compensation amount to the claimants in M.C.O.P.Nos.117 and 118 of 2006.

(vi) The appellant / National Insurance Company Limited is at liberty to withdraw the amount deposited by them to the credit of M.C.O.P.Nos.117 and 118 of 2006 on the file of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.IV, Ponneri.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

krk

To

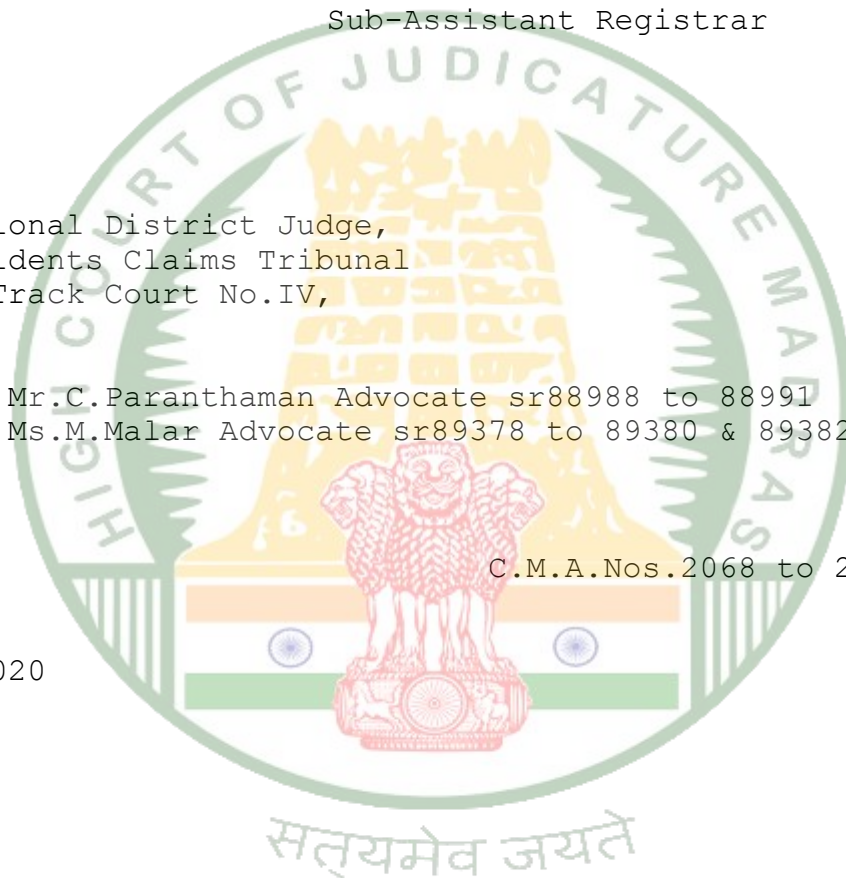
The Additional District Judge,
Motor Accidents Claims Tribunal
The Fast Track Court No.IV,
Ponneri.

+4 ccs to Mr.C.Paranthaman Advocate sr88988 to 88991

+4 ccs to Ms.M.Malar Advocate sr89378 to 89380 & 89382

C.M.A.Nos.2068 to 2071 of 2010

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