IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2809 of 2010, 3246 of 2010, 3247 of 2010
and 3385 of 2014 and
M.P.No.1+1+1 of 2010 and
M.P.No.1 of 2014

Branch Manager,
The National Insurance Company Limited,
Divisional Office-VIII,
No.S-7, Thiruvika Industrial Estate,
Guindy, Chennai. ---- Appellant in 3246 /2010, 3247/2010 and 3385/2014/2nd Respondent

The Divisional Manager,
M/s.The National Insurance Company Limited,
Divisional Office-VIII,
No.S-7, Thiruvika Industrial Estate,
Guindy, Chennai. ---- Appellant in CMA 2809/10/2nd Respondent

Vs.

Sagadevan ... 1st Respondent in CMA 2809 of 2010/Petitioner

Jaganathan ... 1st Respondent in CMA 3246 of 2010//Petitioner

Kumar ... 1st Respondent in CMA 3247 of 2010/Petitioner

Gawaran ... 1st respondent in CMA 3385 of 2014//Petitioner

K.Veerasamy ... 2nd respondent in CMA No.2809, 3246 and 3247 of 2010 and 3385 of 2014/ 1st Respondent(in all)

PRAYER in CMA Nos.2809, 3246 and 3247 of 2010

These Civil Miscellaneous Appeals in CMA 2809/2010, 3246/ 2010 and 3247/ 2010 have been filed under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No.427/2006, 120/2006 and 424/2006 by the Chief Judicial Magistrate, Motor Accidents Claims Tribunal, Krishnagiri on 12.09.2008.

PRAYER in CMA No.3385 of 2014

This Civil Miscellaneous petition has been under Section 173 of the Motor Vehicles Act, 1988, against the order passed in M.C.O.P.No 168 of 2007 respectively by the Principal Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Krishnagiri on 03.11.2011.

For Appellant : Mr.J.Chandran (in all CMAs)

For 1st respondent : No appearance (in CMA No.2809/2010 and CMA No.3385/2014)

For 2nd Respondent: Mr.D.Rameshkumar(In CMA No. 2809/2010)

: Mr.E.Kannadasan (In CMA No.3246/2010 for 1st Respondent

: Mr.E.Kannadasan in CMA No.3247/2010) for 1st Respondent

For R2 : Nor Ready (in CMA 3246 & 3247 of 2010)

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

The Divisional Manager, National Insurance Company Limited, Chennai has filed the present appeals under Section 173 of the Motor Vehicle Act, 1988 questioning the liability, fastened on them by the tribunal, to pay compensation to the claimants.

2. The claimants filed their respective claim petition under Section 166 of the Motor Vehicles Act before the Motor Accident Claims Tribunal, Krishnagiri seeking compensation for the injuries sustained by them in a road accident that took place on 13.09.2003.

3. The brief case of the claimants is as follows. On 13.09.2003, all the claimants were travelling in a Bajaj Mini Door auto bearing registration No.TN-29-K-5350 on Papparappatti-Old Darmapuri road, after loading articles. At about 5.30 a.m, the mini door auto was nearing Kadakattur Junction road and since the driver of the mini door auto belonging to the second respondent drove the vehicle rashly and negligently, mini door auto capsized and the claimants sustained injuries. According to the claimants, the rash and negligent driving of the driver of the mini door auto bearing registration No. TN-29-K-5350, belonging to the 2nd respondent was the cause of the accident and that since the said mini door auto was insured with the present appellant, the National Insurance Company Limited, Guindy, Chennai, they are jointly and

severally liable to pay compensation to the claimants.

4. The owner of the mini door auto (2nd respondent) remained absent before the tribunal and therefore, he was set exparte. The appellant, Insurance company contested the claim petitions.

5. After analysing the evidence on record, the tribunal awarded a compensation of Rs.9,500/-, Rs.52,000/-, Rs.9,500/-, Rs.55,000/- respectively in CMA Nos.2809 of 2010, 3246 of 2010, 3247 of 2010 and 3385 of 2014 and directed the present appellant to pay compensation to the claimants. Aggrieved over the orders passed by the tribunal, the appellant, Insurance company has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988 questioning their liability.

6. Mr.J.Chandran, learned counsel appearing for the appellant/ Insurance Company contended that even as per the first information report, the claimants were travelling in the mini door auto as gratuitous passengers and therefore, the insurance company is not liable to pay any compensation to the claimants. Reliance was placed upon the decision of the Division Bench of this court in Bharathi Axa General Insurance Company Limited Vs. Anandi and others in CMA 1529 to 1533 of 2015 dated 24.10.2018 in which it is held thus.

> 50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the

compensation and giving it the liberty to recover the same from the owner.

51. No doubt it is true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

7. At this juncture, it is relevant to extract the following Motor Vehicles Rules:

Rule 236: Limit of persons in goods carriage. - No person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimetres measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage.

Rule 238. Prohibition of persons on the top of goods carriage. No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such a manner that in any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests.

Rule 240. No person to be carried for hire or reward. - Nothing contained in Rules 236, 238 and 239 shall be deemed to authorise the carriage of any person for hire or reward on any goods carriage.

8. In the decision in National Insurance Company Limited Vs. Anjana Shyam reported in (2007) 7 SCC 445, It has been held thus.

Section 149 of the Motor Vehicles Act, 988 speaks of the judgment or award in respect of the liability as is required to be covered by a policy under clause (b) of sub-section(1) of Section 147 of the Act having to be satisfied. Section 147(1)(b) compels insuring the person or classes of persons specified in the policy to the extent specified in sub-section (ii) of that section. The case on hand will come under Sub-clause (ii) of Clause (b) of Section 147(1) of the Act which obliges the owner to take out insurance compulsorily against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Section 48 of the Act makes special provisions in regard to transport vehicles. Sub-Section (2) provides that a registering authority, when registering a transport vehicle, shall enter in the record of registration and in the certificate of registration, various particulars, Clause (d) provides that if the vehicle is used or adapted to be used for carriage of passengers, the number of passengers for whom accommodation is provided. Thus, the registration of the vehicle, which alone makes it usable on the road, records the number of passengers to be carried and the certificate of registration also contains that entry. So, an Insurance Company insuring the passengers carried in a vehicle in terms of Section 147(1)(b)(ii) of the Act, can only insure such number of passengers as are shown in the certificate of registration. The position is reinforced by Section 72 of the Act, which deals with grant of stage carriage permits. Sub-section (2) provides that when a permit is decided to be granted for a stage carriage, the Regional Transport Authority can attach to the permit one or more of the conditions specified therein. Clause (vii) is the condition regarding the maximum number of passengers that may be carried in a stage carriage. Overloading also invites a consequence which can be termed penal. Section 86 of the Act provides for cancellation of a permit if any condition contained in the permit is breached. Therefore, the apparent wide words of Section 147 (1)(b)(ii) of the Act have to be construed harmoniously with the other provisions of the Act, namely, Section 58 and 72 of the Act. As early as in 1846, Dr.Lushington in R.V.Eduljee Byramjee (1846) 3 MIA 468, posited that to ascertain the true meaning of a clause in a statute the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. This court has accepted this approach in innumerable cases. Thus, the expression 'any passenger' must be understood as passenger authorised to be carried

> in the vehicle and 'use of the vehicle ' as permitted use of the vehicle. Affording of insurance for more number of passengers than permitted, would be illegal since in that case, the manifest intention would be the overloading of the vehicle, something not contemplated by law. Thus, it is not possible to accept a contention that the insurance can be taken to cover more passengers than permitted by the certificate of registration and the permit as a stage carriage and that it will cover all the passengers overloaded. Of course, in these cases, there is no dispute that the insurance cover took in only the permitted number of passengers.

In the instant case, the vehicle is a mini door auto and the seating capacity is 2, including driver. On the date of accident, the claimants were carrying articles in the said vehicle.

9. In United India Insurance Company Vs. Nagammal and others reported in 2009(1) CTC 1, a Larger Bench of this court has held that in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods " Within the permitted seating capacity ", the Insurance Company would not be held liable to pay compensation."

10. Fastening liability on the part of the insurer for more number of passengers than permitted would be illegal. The insurance taken out for the number of permitted passengers would alone determine the liability of the insurance company. Therefore, In the instant case, only one claimant is entitled to get compensation from the insurance company.

11. As far as the quantum of compensation is concerned, the tribunal awarded just compensation of Rs.9,500/-, 52,000/-, 9,500/- and Rs.55,000/- respectively in MCOP No.427/2006, 120 of 2006, 424 of 2006 and 168 of 2007. It is pertinent to note that the claimants did not file any appeal or cross objection against the quantum of compensation awarded by the tribunal. Therefore, the quantum of compensation awarded by the tribunal is upheld.

12. In the result,

i) The quantum of compensation awarded by the tribunal in MCOP No.427 of 2006, 120 of 2006, 424 of 2006 on the file of the Chief Judicial Magistrate, Motor Vehicle Accident Claims Tribunal, Krishnagiri dated 12.09.2008 and in MCOP No.168 of 2007 on the file of the Principal Subordinate Judge, Motor

Accident Claims Tribunal, Krishnagiri dated 03.11.2011 is upheld.

ii) The 2nd respondent, owner of the mini door auto is directed to deposit the compensation of Rs.9,500/-, Rs.52,000/-, Rs.9,500/- awarded by the tribunal in MCOP No.427/2006, 120/2006 and 424 /2006 respectively along with interest at the rate of 7.5% per annum, less the amount already deposited by him, within a period of 4 weeks from the date of receipt of a copy of this order.

iii) The appellant, Insurance Company is directed to deposit the compensation of Rs.55,000/- awarded by the tribunal in MCOP No.168 of 2007 along with interest at the rate of 6% per annum, less the amount already deposited by them, within a period of 4 weeks from the date of receipt of a copy of this order.

iv) On such deposit being made by the appellant, Insurance company and the 2nd respondent, owner of the mini door auto, the claimants are entitled to withdraw the same, after following due process of law.

13. With the above directions, the civil miscellaneous appeals in CMA 2809 of 2010, 3246 of 2010, 3247 of 2010 and 3385 of 2014 are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

mst

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri

2. The Principal Subordinate Judge,
Motor Accident Claims Tribunal,8
Krishnagiri.

+1cc to Mr.J.Chandran, Advocate SR.No.6665

CMA.No.2809, 3246, 3247 of 2010
and CMA No.3385 of 2014
and MP No.1 of 2010 and
MP No.1 of 2014

GJ II(CO)
GMY(17/07/2019)