IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.55 to 60 of 2009
and
M.P.Nos.1, 1, 1, 1, 1, and 1 of 2009

The Divisional Manager
The New India Assurance Co.Ltd
No.42, Big Street
Tiruvannamalai ... Appellant/2nd Respondent in all appeals

Vs

1.Usha ...1st Respondent/Petitioner
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent in C.M.A.No.55 of 2009

1.Jayanthi ...1st Respondent/Petitioner
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent in C.M.A.No. 56 of 2009

1.Suriya ...1st Respondent/Petitioner
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent in C.M.A.No. 57 of 2009

1.Unnamalai ...1st Respondent/Petitioner
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent in C.M.A.No. 58 of 2009

1.Minor Renuga
rep by Father Natarajan ...1st Respondent/Respondent
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent in C.M.A.No.59 of 2009

1.Thenmozhi ...1st Respondent/Respondent
2.Ayyath Basha
(Ex-parte in the Lower Court)
...2nd Respondent/Respondent
in C.M.A.No. 60 of 2009

C.M.A.No.55 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.3 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

C.M.A.No.56 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.4 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

C.M.A.No.57 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.5 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

C.M.A.No.58 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.6 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

C.M.A.No.59 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.7 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

C.M.A.No.60 of 2009 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 31.07.2008 made in OP No.8 of 2007 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Tiruvannamalai.

For Appellant (in all appeals): Mr.N.Vijaya Raghavan

For R1 (in all appeals) : Mr.S.Kumaradevan

COMMON JUDGMENT

Since all these Civil Miscellaneous Appeals have been filed against the common Judgment dated 31.07.2008 arising out of the same accident, they were heard together and are disposed of, by this common judgment.

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

On 25.12.2006 at about 9.30 am, when the claimants in all appeals were travelling in a Mini door van bearing Reg.No.TN 25 E 8735, at Polur Taluk nearing Kappalur Ration shop, at that time, the driver of the vehicle driven the same in a rash and negligent manner and capsized the vehicle. Due to the said impact, all of them sustained grievous injuries. The injured have filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal has awarded compensation and the details of the same are as under:

CMA No.	OP No.	Amount of compensation (Rs.)
55 of 2008	3 of 2007	14,000.00
56 of 2008	4 of 2007	12,000.00
57 of 2008	5 of 2007	12,000.00
58 of 2008	6 of 2007	17,000.00
59 of 2008	7 of 2007	50,000.00
60 of 2008	8 of 2007	14,000.00

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

3. Challenging the same, the appellant Insurance Company has come up with these appeals.

4. The learned counsel for the appellant has not disputed the quantum of compensation awarded by the Tribunal in all Civil Miscellaneous appeals. However, the learned counsel has submitted that the Tribunal has erred in holding that the Insurance Company is liable to pay compensation to the claimants. He also submitted that the Tribunal, having given a finding that the victims were travelling in the vehicle as gratuitous passengers, ought to have exonerated the Insurance Company from payment of compensation. In this connection, he relied upon the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co.Ltd. vs. Aandi, reported in 2018 (2) TN MAC 731 (DB).

5. The learned counsel for the claimants in these appeals, has submitted that the Tribunal has considered the materials and evidence in a proper perspective manner and has awarded the just, fair and reasonable compensation and hence the same need not be interfered with, by this Court.

6. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7. All the injured deposed before the Tribunal that while they were travelling in the Mini door van bearing Reg.No.TN 25 E 8735, the accident occurred and the said van turned turtle. On consideration of the materials and evidence available on record, the Tribunal has given a finding that had the driver of the Mini door van was careful and followed the traffic rules in driving the vehicle, the accident would not have occurred. Finally, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the van.

8. It was put forth on behalf of the Insurance Company before the Tribunal that the vehicle involved in the accident was Mini door van and not a share auto. Further, in a goods carriage vehicle, all the injured have travelled as unauthorised passengers. As per the insurance policy, the driver or owner of the mini door van has no right to carry passengers in the goods carriage vehicle. Allowing more number of persons to travel in the mini door 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.

9. Even though the Tribunal has accepted the contention of the Insurance Company that there was violation of policy conditions, it has observed that the claimants should not be affected due to the negligence on the part of the driver and since the Insurance Company has not proved that there was no insurance coverage for the vehicle, the Insurance Company has to pay the compensation to the claimants.

10. 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.

11. 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 finally held that the direction given by the Tribunal to the Insurance Company to pay the compensation 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.

12. In the case on hand, it is very clear even from the finding given by the Tribunal that there was violation of policy conditions and the injured have travelled as unauthorised passengers. But the Tribunal has ordered the Insurance Company to pay the compensation 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.

13. 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.

14. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Tiruvannamalai.

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

+6cc to M/s.N.Vijayaraghavan, Advocate Sr.65169

C.M.A.Nos.55 to 60 of 2009
and
M.P.Nos.1, 1, 1, 1, 1, and 1 of 2009

cnr[co]
srg 14/10/2020