

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.898 to 901 of 2009
and
M.P.Nos.1,1,1 and 1 of 2009

United India Insurance Co.Ltd.,
Divisional Office,
M.M.Reddy Complex,
Old Bangalore Road, Hosur.

..Appellant in all the appeals/2nd Respondent

Vs

Arumugam1st respondent in C.M.A.No.898 of 2009/Claimant

Vasantha1st respondent in C.M.A.No.899 of 2009/Claimant

Perumal1st respondent in C.M.A.No.900 of 2009//Claimant

Murugan1st respondent in C.M.A.No.901 of 2009/Claimant

K.Jagadeesh

(2nd respondent exparte before
lower Court. Hence notice may
be dispensed with)

... 2nd respondent in all the
appeals/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of the Motor Vehicles Act, 1988, against the common
Judgment and Decree dated 05.09.2007 made in M.C.O.P.Nos.1486,
1487, 1489 and 1490 of 2003, respectively, on the file of Motor
Accidents Claims Tribunal, Sub-Court, Krishnagiri.

For Appellant : Mr.N.Vijayaraghavan

For R1 : No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company against the awards of a sum of Rs.10,000/- each towards compensation to the first respondent(s) respectively, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:-

On 11.11.2002, the first respondent in these appeals and others were travelling in the tempo van bearing Reg.No.KA-05-B-5306 belonging to the second respondent and insured with the appellant Insurance Company, from Uthangarai to Bangalore as loading and unloading coolies, along with vegetable goods. When the van reached near Thuppuganapalli Village, at 8.15 hours, due to the rash and negligent driving by its driver, the van suddenly hit a wayfarer and then dashed against a road side tree. Due to the impact, the first respondent in these appeals and others sustained injuries. They filed separate claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.10,000/- each, with interest at the rate of 7.5% per annum from the respective dates of petitions, to the claimants.

3.Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant Insurance Company has not disputed the quantum of compensation awarded by the Tribunal. But he submitted that the Insurance Company is not liable to pay any compensation to the claimants on account of the fact that the driver of the vehicle deliberately allowed more than 11 persons to be travelled in the goods carriage vehicle, in violation of policy conditions. It is also submitted that in any event, the Tribunal ought to have ordered for pay and recovery.

5.Despite the service of notice, there is no representation on behalf of the first respondent(s)/claimants.

6.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

7.Since the quantum of compensation is not disputed, the same need not be interfered with by this Court.

8.The vehicle in question is a goods carriage vehicle. It is seen from Ex.P1- First Information Report that more than 11 persons were travelling in the goods carriage vehicle at the relevant point of time. It is also seen that the first

respondent in these appeals have travelled in the tempo van along with others, as coolies. The Tribunal has not at all discussed in the judgment as to whether the claimants have travelled as unauthorised passengers or as to whether the policy conditions have been violated by the owner of the vehicle. The Tribunal has dealt with only the negligence aspect and proceeded to order the Insurance Company to pay the compensation to the claimants. Considering the materials and evidence available on record, it is clear that there was violation of policy conditions by the owner of the tempo van by allowing more number of passengers than the permissible limit, to be travelled in the tempo van. In such circumstances, this Court deems it fit to direct the Insurance Company to pay the compensation amounts to the claimants and thereafter to recover the same from the owner of the vehicle, the second respondent herein, in accordance with law.

9. In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest and costs, after deducting the amounts if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent in these appeals / claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal. Thereafter, the appellant-Insurance Company shall proceed against the owner of the vehicle for recovery of the compensation amounts, in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

gbi
To

1. The Sub-Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.
2. The Section Officer,
VR Section, Madras High Court.

+4ccs to Mr.MB.Gopalan, Advocate SR.No.71573, 71574, 71575, 71576

C.M.A.Nos.898 to 901 of 2009

TM (CO)
GMY (06/08/2020)