

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2668 to 2674 of 2011
and
M.P.Nos.1 of 2011

M/s.United India Insurance Company Limited,
Pondicherry. ... Appellant in all C.M.As

Vs.

Antonymsamy ... 1st Respondent/Petitioner in
C.M.A.No.2668 of 2011

John Bosco ... 1st Respondent/Petitioner in
C.M.A.No.2669 of 2011

Arputhanathan ... 1st Respondent/Petitioner in
C.M.A.No.2670 of 2011

Sagayamary ... 1st Respondent/Petitioner in
C.M.A.No.2671 of 2011

Ragini ... 1st Respondent/Petitioner in
C.M.A.No.2672 of 2011

Nicolous ... 1st Respondent/Petitioner in
C.M.A.No.2673 of 2011

Johndoss ... 1st Respondent/Petitioner in
C.M.A.No.2674 of 2011

2. Mr.Stanley
(R2 set exparte before the Tribunal) .. 2nd respondent/
1st Respondent in all C.M.As

Prayer in C.M.A.No.2668 of 2011: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988 against
the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.495
of 2007 on the file of the Motor Accident Claims Tribunal
(Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2669 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.498 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2670 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.499 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2671 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.500 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2672 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.502 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2673 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.523 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

Prayer in C.M.A.No.2674 of 2011: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 04.02.2011 made in M.C.O.P.No.524 of 2007 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge) at Villupuram.

For Appellant : Mr.D.Bhaskaran
in all C.M.As

For R1 : Mr.R.Arundattan
for M/s.C.Munusamy in all C.M.As

For R2 : Exparte before the Tribunal
in all C.M.As

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

The 2nd respondent before the Tribunal, is the appellant herein.

2. The respective respondents are the claim petitioner filed the claim petition in M.C.O.P.Nos.495, 498, 499, 500, 502, 523 and 524 of 2007 before the Motor Accident Claims Tribunal, (Principal Subordinate Judge) at Villupuram.

3. The brief facts of the case of the petitioner/claimant as follows:-

On 29.06.2007 at about 10.30 hrs, the petitioner and his relatives after attending his neighbour's marriage were returning to their village as a passenger in the Swaraj Mazda Van bearing Registration No.TN 07 E 4622. When the van nearing Mugaiyur to Villupuram Main Road, near Aiyandhure Road the driver drove the vehicle in the rash and negligent manner and the van capsized and caused the accident. Due to the accident, the petitioner and other passengers sustained injuries all over the body and also one minor Hemalatha died on the spot. Immediately, the petitioner and others were taken to Government Hospital, Villupuram. The accident happened due to the rash and negligent driving of the said van driver.

4. Before the Tribunal, the Insurance Company has filed a written statement raising a specific plea that the seating capacity as approved by the Registering Authority as a passenger van is 12+1 (driver) and at the time of the accident, number of persons who are travelling in the said van is over and above the permissible seating capacity.

5. During the Trial, on the side of the petitioner, P.W.1 to P.W.7 were examined and Exhibits P1 to P13 were marked. On behalf of the respondent-Insurance Company, no oral and documentary evidence were adduced before the Tribunal.

6. Based upon the oral and documentary evidence as narrated above, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the van and also held that since the number of persons who are claim petitioners numbering 7 and seating capacity is 12 for the passenger, apart from the driver, has held that the Insurance Company is being jointly and severally liable along with the owner of the van and awarded compensation on various heads. Based upon the liability, the Insurance Company has preferred these appeals.

7. The learned counsel for the Insurance Company would submit that at the time of the accident, the number of passengers travelling in the van is over and above the seating capacity namely 12 and as such it is violation of the policy condition and also drawn my attention of Exhibit P3 R.C Book and stated that Exhibit P3 is a Registration Certificate issued by

the Registering Authority while Exhibit P4 is the policy of Insurance given by the respondent-Insurance Company and Exhibit P5 is the Driving Licence of the driver at the time of the accident.

8. Taking into consideration of the fact that the number of persons who are said to have been injured is only 7 and they have preferred M.C.O.Ps and Insurance Company is also not in a position as to whether any other claim petition has been filed in respect of the very same accident. It remains to be stated that Insurance Company has not adduced any oral and documentary evidence before the Tribunal. Admittedly, as per Exhibit P3 the seating capacity of the passenger vehicle injured in the accident being 12 and the claim petition are fastening to only 7 in number, I am inclined to uphold that the finding of the Tribunal in liability upon the Insurance Company based upon Exhibit P4 is justifiable and the same is confirmed.

9. On the point of quantum of compensation, I heard both the parties.

10. After taking into consideration of the injured sustained by the various claimants and also the quantum of compensation awarded by the Tribunal which is found to be reasonable and just, the same cannot be termed as excessive.

11. In this view of the matter, these Civil Miscellaneous Appeals are dismissed and the award passed by the Tribunal is hereby confirmed both on the point of liability and quantum. The Insurance Company has submitted that the entire amount has already been deposited. It is open to the claimant to file petition before the Tribunal for withdrawal of the compensation amount. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvi
To

The Motor Accident Claims Tribunal (Principal Subordinate Judge)
Villupuram.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.C.Munusamy, Advocate, Sr.No. 21062
+1 cc to M/s.D.Bhaskaran, Advocate Sr.No. 20645

C.M.A.Nos.2668 to 2674 of 2011 and
M.P.Nos.1 of 2011

NMI (CO)
CSL/18.06.2019



WEB COPY