IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2019

PRONOUNCED ON : 08.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2739, 2740, 2741, 2742, 2743 & 2744 of 2011
and
C.M.P.Nos.1, 1, 1, 1, 1 & 1 of 2011

The Divisional Manager,
The New India Assurance Company Limited,
Vasavi Building, Second Floor,
No.42, Big Street, Thiruvannamalai.
... Appellant in all CMAs/ 2nd Respondent

.. Vs ..

Chinnakulandhai ... 1st Respondent in CMA.No.2739/2011/Petitioner

Shanthi ... 1st Respondent in CMA.No.2740/2011/Petitioner

Pavunammal ... 1st Respondent in CMA.No.2741/2011/Petitioner

Radhakrishnan ...1st Respondent in CMA.No.2742/2011/Petitioner

Rani ...1st Respondent in CMA.No.2743/2011/Petitioner

R.Murugan ...1st Respondent in CMA.No.2744/2011/Petitioner

2.K.Viswanathan ...2nd Respondent in all CMAs /1st Respondent

PRAYER:

Appeals filed under Section 173 of the Motor Vehicle Act, 1988 against the judgment and decree dated 24.01.2011 made in M.A.C.T.O.P.No.1169, 1124, 1125, 1127, 1170 of 2006 & 445 of 2007, on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Thiruvannamalai.

For Appellant
in all CMAs : Mr.R.Sivakumar

For R1
in all CMAs : Mr.B.Jawahar

For R2
in all CMAs : No appearance

JUDGMENT

All these appeals have arisen out of the common award dated 24.01.2011 passed in MCOP Nos.1169, 1124, 1125, 1127, 1170 of 2006 and 445 of 2007 respectively, before the Motor Accident Claims Tribunal, Additional Sub Judge, Thiruvannamalai.

2 The appellant/Insurance Company has filed these appeals, challenging the award of the Tribunal by fixing the liability on them to deposit the compensation to the claimants.

3 All the claimants met with an accident, which took place on 19.04.2006. According to the claimants, on 19.04.2006, at about 1.45 pm, the claimants were travelling in a three wheeler goods vehicle bearing Registration No.TN-25-E-6601 carrying flowers. The second respondent herein is the owner of the vehicle, which was insured with the appellant/Insurance company. When the vehicle was proceeding near G.K.Bus Lorry Workshop at Thandrampattu in Tiruvannmalai, it was capsized, due to the rash and negligent driving of the driver of the said vehicle. Due to the impact, all the claimants sustained injuries and admitted to the Government Hospital, Tiruvannamalai. In connection with the above said accident, the six claimants have filed the above said claim petitions, claiming compensation for their injuries sustained in the accident.

4 All the claim petitions were resisted by the appellant/Insurance company by disputing their age, avocation, income and other details furnished in the claim petitions and prayed for dismissal of the claim petitions.

5 Before the Tribunal, common evidence was let in and the claimants PW.1/Chinnakulandhai, PW.2/Rani, PW.3/Shanti, PW.4/Pavunuammal, PW.5/Radhakrishnan and PW.6/R.Murugan were examined and Exs. P1 to P16 were marked. On behalf of the Insurance company, one Ganesan/Assistant Manager was examined as RW1 and Ex.R1/copy of PW.6 Ration card and Ex.R2/ copy of Insurance policy were marked.

6 The Tribunal, after considering the oral and documentary evidence, held that the accident had caused due to the rash and negligent driving of the driver of the Goods Auto and awarded the claimants with the following compensation: in MCOP.No.1169 of 2006, a sum of Rs.79,000/-; in MCOP.No.1170 2006, a sum of Rs.79,000/-; in MCOP.No.1124 of 2006, a sum of Rs.79,000/-; in MCOP.No.1125 of 2006, a sum of Rs.12,500/-; in MCOP.No.1127 of 2006, a sum of Rs.10,000/- and in MCOP.No.445 of 2007, a sum of Rs.1,56,400/-.

7 According to the learned counsel for the appellant, as per Ex.P1/FIR, Ex.P9/Certified copy of Charge sheet, Ex.P10/Accident Register and Ex.P12/ Judgment copy of Judicial Magistrate No.1, the driver of the goods vehicle took the claimants as unauthorized passengers. Further, he contended that the vehicle was used against the terms and conditions of the Insurance company and in contravention of the provisions of the Motor Vehicles Act. The Tribunal did not consider the specific pleas raised by the Insurance company that they cannot be made liable and only the second respondent/ owner of the goods vehicle, is responsible to pay the compensation to the victims. Since the second respondent did not pay any premium towards the passengers or any person or employee, the claimants were not covered under the policy as per the terms and conditions Ex.R2/ copy of Insurance Policy.

8 The Learned counsel for the first respondent in all the appeals relied upon the decision of the Honourable Supreme Court in the case of Chinnappan Vs. K.P.Ramraj and others reported in 2012 (1) TN MAC 668, and the relevant portion of the said Judgment reads as follows:-

> "21. In the light of the above discussion, this Court is not inclined to subscribe to the contentions of the Insurance Company that the appellant traveled as a gratuitous passenger. Even otherwise, the owner of the vehicle has paid Rs. 50/- to cover a non-fare paying passenger in case of legal liability.
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> 24. In the light of the legal pronouncements stated supra, coupled with the testimony of P.Ws.1 and 2, the appellant cannot be denied payment of compensation by the insurer. As stated supra, there is also evidence to the effect that he travelled along with the buffaloes."

He also relied upon another Judgment in the case of New India Assurance Co.Ltd., Vs. Shanti Devi and others reported in 2006 ACJ 1501, wherein, it has held as follows:-

"4.It has been argued by the counsel for the insurance company that as Lachhman was travelling as a passenger in a truck, therefore, the insurance policy did not cover the use of the vehicle for carrying passengers. It was submitted that only goods could be carried in the truck and not passengers, even if the passengers had paid any amount to the truck driver or owner. In the present case, although the deceased was travelling in a goods vehicle, which was hired for carrying a marriage party, however, insurance company has not produced any permit to show that deceased was a gratuitous passenger. In United India Insurance Co. Ltd. v. Ramanbhai Kuchrabhai Royal and Ors. 1996 A.C.J. 524, it has been held that when a goods carrier was carrying a marriage party at the time of accident and the insurance company fails to produce either the permit or any copy thereof, the insurance company is liable to indemnify the insured.

5. In the present case, the insurance company has failed to prove that Lachhman was a gratuitous passenger, therefore, it has rightly been held liable to indemnify the insured. It was next argued by the counsel for the insurance company that driver of the offending truck did not have a valid driving licence. The mere fact that the licence possessed by the driver was fake or invalid cannot absolve the insurance company from its liability to indemnify the insured. It is held in National Insurance Co. Ltd. v. Swaran Singh and Ors. (2004-1)136 P.L.R. 510 (S.C.) that:-

(iii) The breach of the policy conditions, e.g. disqualification of driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere, absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time."

9 As the owner of the vehicle remained ex-parte, the Insurance Company filed I.A.Nos. 2580, 2581, 2582, 2583, 2584, 2585 of 2010, under Section 170 of the Motor Vehicles Act and the same was allowed on 21.12.2010.

10 After hearing the rival submissions made on behalf of the Insurance Company and the claim petitioners, the core question that has to be decided is that as to whether the insurance policy covers the risk of claimants.

11 According to the appellant herein /Insurance Company, all the claimants are not third party and the policy issued in favour of the second respondent/owner of the vehicle does not cover the risk of the unauthorized passenger in the goods vehicle and relied upon the oral evidence of RW1/Ganesan and Ex.R1/Xerox Copy of Family Card of PW6.

12 Per contra, the learned counsel appearing for the first respondent/claimants would contend that PW1/Chinnakuzhandhai, PW2/Rani have travelled in the vehicle as owner of the goods, while PW3/Santhi, PW4/Pounammal and PW5/Radhakrishnan were travelled as cooli in the van/goods carriage, while PW6/Murugan have travelled along with these goods relating to cable TV operation and as such they are not unauthorized passenger and they travelled as owner of the goods only. Ex.P29 is a Policy Copy marked by the claim petitioners while Ex.R2 is the Xerox Copy of the Insurance Policy marked by the RW1 on behalf of the Insurance Company.

13 On a perusal of Ex.P1/FIR, it is mentioned that injured person was waiting in the bus stand to return to Tiruvanammalai and they have boarded the vehicle for going to Tiruvannmalai and based upon the content in the Ex.P1/FIR, it is contended that there was no whisper in FIR regarding hiring of the vehicle by the claim petitioners. It is to be stated that FIR is not encyclopedia of all facts and the facts stated therein must be over and above the evidence of the injured witnesses deposition in the Court of law. Hence, the FIR cannot be taken as the only document which states all the facts relating to the accident and the goods vehicle involved in the accident assumes significance.

14 In the decision reported in 2012 (1) TN MAC 668 - [Chinnappan Vs. K.P.Ramraj and others], wherein, this Court has held that :

> "Merely because in First Information Report cleaner failed to mention that buffaloes were transported in Tempo and merely because owner failed to mention in Claim Form that vehicle carried buffaloes, would not give rise to conclusion that

Claimant did not travel in Tempo Van as owner of buffaloes or that he travelled as a gratuitous passenger."

15 Furthermore, during the cross-examination, there was no suggestion with regard to travel by the PW1, PW2 and PW6 as owner of the goods accompanied, the goods also assumes significance. Considering the oral evidence of PW1, PW2 and PW6 coupled with the ratio laid down in the above said citation, this Court is of the considered view that PW1, PW2 and PW6, who are the respective claim petitioners, have proved the fact that they travelled in the vehicle as owner of the goods and in the absence of any contra evidence being demonstrated by the Insurance Company, the finding of the Tribunal is that they are travelled as owner of the goods but not as unauthorized passengers. For the different reasoning as discussed above, the Tribunal finding is hereby confirmed.

16 It remains to be stated that as per Ex.P12/Judgment copy rendered by the Judicial Magistrate No. I, Tiruvannmalai, the driver of the vehicle has admitted the guilty and also paid the fine in the decision reported in the 2007 (2) TN MAC 399 DB (Oriental Insurance Company Limited, rep. by its Branch Manager, Pondicheri – Vs – K.BalaSubramanian and others)

"Negligence – Evidence – Relevancy – Judgment of Conviction by Criminal Court, on basis of admission of guilty – Admissible in evidence as document containing admission – Unless and until admission proved to be incorrect or false, same remains as best piece of evidence."

17 Thus, this Court comes to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the van in which PW1, PW2 and PW6 travelled as owner of the goods. It is to be stated that in respect of the claim petitions by PW3, PW4 and PW5, they specifically pleaded in their claim petitions and also deposed in the witness box that they are working as cooli in the van and on perusal of EX.R2/Policy, the policy is package policy.

Section II LIABILITY TO THIRD PARTIES

1 Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of any accident caused by or arising out of the use of vehicle against all sums including claimant's cot and expenses which the insured shall become legally liable to pay in respect of

i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the vehicle.

ii) damage to property caused by the use (including the loading and/or unloading) of the vehicle.

f)Except so far as is necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death and/or bodily injury to any person(s) who is/are not employee(s) of the insured and not being carried for hire of reward, other than owner of the goods or representative of the owner of the goods being carried in or upon or entering of mounting or alighting from the insured vehicle described in the Schedule of this Policy.

18 In view of the clause contended in the above referred policy Ex.R2/Xerox Copy of the Policy of the First respondent, it is seen that, it is a package policy and the policy covered has been extended by the Company to the owner of the goods or representative of the owner of the goods and further PW3, PW4 and PW5 being the cooli working under the employment of the owner of the vehicle, they are also covered. A similar finding rendered by the Tribunal is hereby confirmed and this Court does not warrant any interference at this appellate stage.

19 Accordingly, this Court holds that in view of the clause contended in the policy Ex.R2/Package Policy and PW1, PW2 and PW6 had travelled in the vehicle as owner of the goods, accompanied the goods in the vehicle and PW3, PW4 and PW5 travelled as cooli and they are working under the owner of the vehicle. Being the claim proved, the Insurance Company under the policy is liable to pay the compensation jointly and severally along with owner and similar finding arrived by the Tribunal does not warrant any interference and hence, the same is hereby confirmed.

20 On the point of quantum of compensation both the parties were heard and perused the documents.

21 After going through the evidence and document available before the Court, on perusing the Ex.P2/certified copy of the Accident Register Pertaining to PW1, Ex.P4/Certified Copy of the Accident Register for the PW2, Ex.P5/Certified Copy of the Accident Register Pertaining to PW3, Ex.P6/Certified Copy of the Accident Register Pertaining to PW4, Ex.P7/Certified Copy of the Accident Register Pertaining to PW5 and Ex.P9/Certified Copy of the Accident Register Pertaining to PW6 and Ex.P13 to P16

pertaining to the Discharge Summaries issued to PW6, Ex.P18 pertains to prescriptions series issued to PW6 and taking into consideration, the Disability Certificate issued by PW7/Dr.Ravindran and PW8/Dr.Senthil Kumar under Ex.P21/Permanent Disability Certificate issued to PW1, Ex.P23/ Permanent Disability Certificate issued to PW2, Ex.P25/Permanent Disability Certificate issued to PW3, Ex.26/X-ray relating to PW6, this Court is of the considered view that the compensation awarded appears to be reasonable and the compensation under the different heads also appears to be reasonable and hence, the quantum of compensation awarded in all the six appeals appears to be just and fair and hence, the same is hereby confirmed.

22 In view of the finding that three claimants have travelled in vehicle as owner of the accompanied goods in the said van while other three claimants have travelled in the vehicle as cooli and in view of the specific clause contended in the Ex.R2/Package Policy, the Insurance Company is jointly and severally liable to pay compensation and the compensation awarded under the different heads to the claim petitioners by the Tribunal is found to be fair and just and hence, all the awards hereby confirmed.

23 In the result:

(i) All the Civil Miscellaneous Appeal filed by the appellant herein/Insurance Company stands dismissed and the compensation awarded by the Tribunal in MCOP Nos.1169, 1124, 1125, 1127, 1170 of 2006 & 445 of 2007 is confirmed.

(ii) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The Insurance Company is directed to deposit the award amount as ordered by Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded with proportionate interest, less the amount already withdrawn, if any.

(v) No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AD-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   the learned Additional Sub Judge,
   Thiruvannamalai.

2. The Section Officer,
   V.R.Section,
   High Court, Madras. (2 Copies)

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.68155
+1cc to Mr.B.Jawahar, Advocate, S.R.No.68351

C.M.A.Nos. 2739, 2740, 2741, 2742, 2743 & 2744 of 2011

KS(CO)
CS/03/06/2020