IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.04.2019

PRONOUNCED ON:12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.Nos.2190 & 2191 of 2012

The Oriental Insurance Company Ltd.,
Arcot Road, Vellore. ... Appellant in both appeals

Vs.

1. S.Velmurugan @ Velu,
No.2/63, Old Munsif Court Street,
Saidapet, Vellore. ... Respondent in both appeals

2. Moorthi,
No.931, North Street,
Kattukanallur Village,
AraniTaluk. ... Respondent in C.M.A.No.2190 of 2012

2. Nirmala

3. N.Gayathiri

4. B.Saraswathi

5. Nagaraj
No.473, Kambar Street, Gandhi Nagar,
Katpadi, Vellore District.

6. Moorthi,
No.931, North Street,
Kattukanallur Village,
Arani Taluk. ... Respondents in C.M.A.No.2191 of 2012

Prayer in C.M.A.No.2190 of 2012:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2010 in M.C.O.P.No.381 of 2008 on the file of the Motor Accident Claims Tribunal, Vellore/Chief Judicial Magistrate, Vellore.

Prayer in C.M.A.No.2191 of 2012:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 22.11.2010 in M.C.O.P.No.576 of 2008 on the file of the Motor Accident Claims Tribunal, Vellore/Chief Judicial Magistrate, Vellore.

For Appellant in both appeals	:	Mr.R.Sivakumar
For R1 in C.M.A.No.2190 of 2012	:	Mr.C.Prabakaran
		R2 - Given up
For R1 to R4 in C.M.A.No.2191of 2012	:	Mr.C.Prabakaran

COMMON JUDGMENT

The appellant has filed these civil miscellaneous appeals against the common judgment and decree dated 22.11.2010 in M.C.O.P.Nos.381 & 576 of 2008 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Vellore.

2. C.M.A.No.2190 of 2012 is relating to the injuries sustained by Velmurugan @ Velu while, C.M.A.No.2191 of 2012 is relating to claim of the legal heirs of the deceased Navinkumar in a road accident.

3. The claim petitions are preferred by the claimant before the Tribunal alleging that Velmurugan, the claimant/petitioner in M.C.O.P.No.381 of 2008 (C.M.A.No.2190 of 2012) travelled in the Van as coolie while the deceased Navinkumar in M.C.O.P.No.576 of 2008 (C.M.A.No.2191 of 2012) travelled as a cleaner in the Van and due to the rash and negligent driving of the driver of the van, the vehicle got capsized around 2.00 a.m. in the morning which resulted in the death of Navinkumar and caused injuries to Velmurugan, the claimant before the Tribunal.

4. Before the Tribunal, the insurance company filed counter statement alleging that those two persons had travelled as unauthorized passengers and the same amounts to violation of the terms and conditions of the policy and therefore, the insurance company cannot be fastened with the liability.

5. Before the Tribunal, four witnesses PW1 to PW4 were examined and Exs.P1 to P12 were marked on behalf of the petitioners/claimants. The Assistant from the Taluk Office was examined as RW1 and Ex.R1 was marked and the Legal Officer from

the Insurance company was examined as RW2 and Exs.R2 and R3 were marked on the side of the respondent.

6. After taking into consideration the oral and documentary evidence adduced by the respective parties, the Tribunal has directed the Oriental Insurance Company Limited to pay a sum of Rs.1,83,185/- to the first petitioner therein together with interest at the rate of 7.5% per annum and a sum of Rs.5,49,000/- to the second and third petitioners therein together with interest at the rate of 7.5% per annum.

7. Based upon the evidence of PW1/the injured coupled with Exs.P1 to P4, 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 in the absence of any contra evidence, the said finding is hereby confirmed.

8. On the point of quantum, both the parties are heard.

9. C.M.A.No.2190 of 2012 (M.C.O.P.No.381 of 2008):

Dr.Shanmugasundaram (PW3) who had examined Velmurugan (PW1), the injured coupled with Disability certificate (Ex.P8) , fixed the disablity at 40%. After perusing the discharge summary (Ex.P2), it appears that he has taken treatment for two days in the hospital after surgery and he has sustained injuries in his right shoulder, right hand and right ribs and based upon the discharge summary (Ex.P2) and the disability certificate (Ex-P8) coupled with Dr.Shanmugasundaram (PW3)'s oral evidence, the disability fixed by the Tribunal at 40% is reasonable and is hereby confirmed. The Tribunal has awarded a sum of Rs.24,000/- towards loss of income during the treatment period, is also confirmed. The award for transportation charges and nourishment is enhanced to Rs.10,000/- respectively. Considering the nature of injuries sustained by the claimant/petitioner and in view of Medical Bills (Ex.P5), a sum of Rs.16,800/- is awarded towards 'medical expenses'. As per the discharge summary (Ex.P2), the Tribunal has awarded a sum of Rs.42,000/- towards pain and suffering which is on the higher side and so, decreased to Rs.20,000/-. Due to the injuries and disabilities sustained in the accident, for 'loss of amenities' and 'attender charges', Rs.10,000/- is granted under each head. For damage of clothes Rs.1,000/- is granted. The amount of compensation is re-assessed and re-fixed as above arrived at Rs.1,81,800/- is hereby confirmed.

10. On the point of quantum of compensation payable in the fatal case in C.M.A.No.2191 of 2012 (M.C.O.P.No.576 of 2008):

10.1 Based upon postmortem certificate (Ex.P6), the age of the deceased is fixed at 42 years and as per Sarla Varma and other Vs. Delhi Transport Corp. and another reported in (2009) 6 SCC 121, multiplier 14 has to be adopted. Taking into note the nature of the avocation said to have been carried on by the deceased Navinkumar, the notional income of the deceased is fixed at Rs.4,000/- per month, therefore, his annual income in Rs.48,000/-. When the annual income of Rs.48,000/- is multiplied with multiplier 14, pecuniary loss to the family is Rs.6,72,000/-. He could have contributed 1/3rd amount towards personal expenses , after deducting the 1/3rd amount for personal expenses of the deceased, which comes to Rs.2,24,000/-, the balance available for the family is Rs.4,48,000/- and the same is hereby confirmed. The second petitioner/claimant, wife of the deceased Navinkumar is awarded Rs.40,000/- as consortium and Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate is granted. N.Gayathiri, the third petitioner/claimant therein and the second respondent herein, being the daughter of the deceased Navinkumar is entitled for Rs.20,000/- towards the loss of love and affection of the deceased father.

10.2 Thiru Imamkasim (PW4), the Assistant from the Taluk office has marked the Legal Heir Certificate (Ex.P12) showing that Nirmala and Gayathiri are the legal heirs of the deceased Navinkumar and the other claimants viz., Saraswathi and Nagaraj were not the legal heirs, accordingly, the Tribunal has rightly rejected the claim of Saraswathi and Nagaraj. Hence, the quantum of compensation is re-assessed and re-fixed as above is confirmed.

11. On the point of liability by the insurance company, both the parties are heard.

12. The learned counsel for the appellant/insurance company would contend that as per the investigation report (Ex.R2), six persons were alleged to have travelled in the offending vehicle and therefore, the same amounts to violation of the policy condition and these two persons viz., Velmurugan (injured) and Navinkumar (deceased) have travelled as unauthorized passengers and as such, the insurance company is not liable to pay any compensation.

13. The learned counsel for the claimants/respondents would contend that both the persons have travelled as cleaner and coolie working under the owner of the lorry and as such, in view of the nature of the policy covering the labour working under owner and they had travelled in the cabin of the lorry, they are entitled for policy coverage.

14. After hearing the rival submissions of the respective parties and also after perusing the investigation report (Ex.R2), under the terms and conditions laid in the Insurance

Policy copy (Ex.R3), it is seen that the Legal Officer (RW2) from the insurance company has marked the investigation report (Ex.R2) said to have been submitted by the investigator and the said investigator of the insurance company has not been examined before the Court. On perusal of the investigation report (Ex.R2), it appears that the report is based upon the hearsay witnesses. They have not even choose to examine the driver of the lorry also assumes significance. It remains to be stated that except the report of the investigation officer under Ex.R2, no supporting or substantiating document has been let in by the insurance company to point out the fact that the injured and the deceased Navinkumar travelled in the lorry as unauthorized passengers.

15. At this juncture, it remains to be stated that as per the FIR copy (Ex.P1), it is categorically mentioned that the deceased Navinkumar was working as a cleaner. On perusal of the copy of the insurance policy (Ex.P10) which is also marked as Ex.R3, the policy coverage is for GCCV-Public carriers other than three wheelers package policy-zone C. The seating capacity is shown as 2+1, IMT-21 and IMT-20 is also mentioned. As stated supra, the insurance company has not examined the driver of the vehicle or the owner of the vehicle, in fact, the owner of the vehicle has remained ex parte and the policy covers use only under a permit within the meaning of the Motor Vehicles Act 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988 and as to the usage of the vehicle, it is mentioned as under "clause (3): Use for carrying passengers in the vehicles, except employees (other than the driver) not exceeding the number permitted in the registration document and coming under the purview of Workmen's Compensation act 1923".

16. In view of the admitted factual position that the deceased was working as a cleaner and the injured as a coolie, as could be seen from the FIR copy (Ex.P1), in the absence of any positive evidence from the competent witness namely the owner of the vehicle and in the absence of any positive evidence being let in by the insurance company that they are not the employees of the owner of the vehicle and in view of the presence of the FIR copy (Ex.P1) which came into existence immediately after the occurrence of the accident and also taking into note of the clause and terms contained in the insurance policy, this Court is of the considered view that the deceased and injured had travelled as cleaner and coolie and they are also covered under the policy of the vehicle and hence, the insurance company is liable, in turn, both the owner of the lorry and the insurance company are liable to join together to pay compensation. In view of the said factum, the order passed by the Tribunal fastening the liability upon the insurance

company is hereby confirmed.

For the reasons aforestated in the preceding paragraphs, the quantum of compensation arrived at in both appeals are confirmed and in such view of the matter, both civil miscellaneous appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nsd

To

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

2. The Section Officer,
   V.R.Section, High Court,
   Madras.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.33236
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.36508

C.M.A.Nos.2190 & 2091 of 2012

EV(CO)
CS/17/10/2019