IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.Nos.2224 to 2226 of 2013
and
MP.Nos.1,1 and 1 of 2011

The National Insurance Co. Ltd.,
Ist Floor, Karthikeya Complex,
No.403, B-10, Mettur main road,
Bhavani.
...Appellant /3rd respondent
vs.

1.Balaguru
2.Palanisamy
3.Moorthy ... Respondents in CMA No.2224 of 2013

1.Viswanathan
2.Palanisamy
3.Moorthy ... Respondents in CMA No.2225 of 2013

1.Sangeetha
2.Palanisamy
3.Moorthy ... Respondents in CMA No.2226 of 2013

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 19.01.2012 passed in MCOP.Nos.175 of 2010, 176 of 2010 and 177 of 2010 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Perundurai.

For Appellant : Mrs.R.Sreevidhya
(in all CMAs)
For Respondents : No appearance
(in all CMAs)

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

The National Insurance Company Limited, the third respondent in MCOP.Nos.175 of 2010, 176 of 2010 and 177 of 2010 on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Perundurai has filed the present appeals questioning their liability to pay compensation to the claimants. The first respondent in all the appeals filed the respective claim petitions under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by them in a road accident that took place on 28.10.2009.

2. The case of the claimants is that on 28.10.2009, they were travelling with their household articles in a lorry bearing Registration No. TN 33 D 9909 belonging to the third respondent and insured with the present appellant from Erode to Uthankarai and at about 17.00 hours, the driver of the lorry drove the vehicle rashly and negligently and hit a tamarind tree abutting the road, as a result of which, the claimants sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver of the lorry was the cause of the accident and that since the said lorry was insured with the present appellant, both the owner and the insurer are jointly and severally liable to compensation.

3. The owner and the driver of the lorry remained absent before the Tribunal and therefore they were set exparte. The learned Motor Accident Claims Tribunal / Subordinate Judge, Perundurai after analysing the evidence on record, awarded compensation of Rs.2,64,263/-, Rs.2,32,273/- and Rs.16,224/- together with interest at the rate of 7.5% per annum to the claimants in MCOP.Nos.175 of 2010, 176 of 2010 and 177 of 2010 respectively. He further concluded that the liability of the National Insurance Company Limited and the owner of the lorry is joint and several. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited has filed the present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. Mrs.R.Sreevidhya, learned counsel appearing for the National Insurance Company Limited contended that since all the claimants travelled as gratuitous passengers in the lorry, there is a violation of conditions of the policy and the Insurance Company cannot be held liable to pay compensation to the claimants. She therefore prayed for dismissal of the claim petitions as against the Insurance Company.

5. No appearance on behalf of the respondents.

6. A perusal of a copy of the RC book of the lorry bearing Registration No. TN 33 D 9909 (Ex.R2) shows that the seating capacity of the lorry is 3 + 1 and a copy of the Insurance Policy (Ex.R1) also shows that it is a 'package policy'. Since the claimants travelled as the owners of the goods, all of them are entitled to get compensation from the Insurance Company. In fact, this aspect was dealt with in extenso by the Tribunal and it is relevant to extract paragraph no. 14 of the orders passed by the Tribunal.

> "14. On perusal of the records, it could be seen that the petitioners in MCOP.No.175/2010 and 177/2010 are the husband and wife and also they are the owners of the goods carried by the lorry. Apart from that their female baby aged about 3 years and the petitioner in MCOP.No.176/2010 by name Viswanathan also travelled. Therefore the

> child cannot be treated as a grown up person. If so only there were four persons travelled in the lorry out of them the petitioners Balaguru and Sangeetha are the owners of the goods and only the petitioner Viswanathan is a 3rd party who travelled in the lorry. Under these circumstances, this Court feels it cannot be said that the second respondent violated the Insurance Policy. Because even as per the evidence of RW1 in his cross examination he would admit that Insurance Policy taken for six persons including the driver of the lorry. The said petitioner Viswanathan travelled in the lorry only to down load the household articles taken in the lorry. Therefore, this Court feels that since the Insurance Policy taken for six persons it covers all these petitioners and therefore there is no violation of Insurance Policy condition in this case. Even assuming for a moment that there is a violation of Insurance Policy condition, as far as these petitioners are concerned they are 3rd parties to the policy. Therefore the Insurance Company is liable to pay the compensation and if there is any violation of policy condition, the Insurance Company is at liberty to recover the same from the owner. But in this case, this Court feels that there is no violation of Insurance Policy."

7. It is also not the case of the Insurance Company that all the claimants were sitting on the load area. In the decision in United India Insurance Company Vs. Nagammal and others reported in 2009 (1) CTC 1, a Larger Bench of this court has held that, in case of passengers in a goods vehicle, unless it is shown that they were travelling either as the owners of the goods or as authorised representative of the owner of the goods "within the permitted seating capacity", the Insurance Company would not be held liable to pay compensation. Since in the instant case, the claimants travelled as authorised representatives of the household articles and were sitting within the permitted seating capacity, the order passed by the Tribunal is perfectly in order.

8. As far as the quantum of compensation is concerned, no arguments were advanced by the learned counsel appearing for the appellant and no cross objection or appeal was filed by the claimants. A perusal of the award also shows that it is not on the higher side and in the facts and circumstances, the appeals fail and are dismissed.

9. In the result,

(i) The Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(ii) The orders passed by the Tribunal is upheld.

(iii) The appellant / National Insurance Company Limited is directed to deposit the compensation awarded by the Tribunal i.e., Rs.2,64,263/-, Rs.2,32,273/- and Rs.16,224/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.Nos.175 of 2010, 176 of 2010 and 177 of 2010 respectively on the file of the Motor Accident Claims Tribunal / Subordinate Judge, Perundurai within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the claimants are at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Subordinate Court,
Perundurai.

Copy to:
The Section Officer, VR Section, High Court,Madras.

+1cc to M/s.R.Sreevidhya , Advocate SR.No. 84623

CMA.Nos.2224 to 2226 of 2013
and
MP.Nos.1,1 and 1 of 2011

cnr co
A.SK(22/07/2020)