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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 13.02.2019]

[PRONOUNCED ON : 22.04.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.535 and 536 of 2011
and
M.P.Nos.1 and 1 of 2011

M/s. National Insurance Company Ltd.,
M.T.P.C. Office,
No.751, Anna Salai,
Chennai - 600 002. ... Appellant/2nd Respondent in both C.M.As.

.. Vs ..

1. Shanawaz ..1st Respondent/ Petitioner
2. Saroja ...2nd Respondent/ 1st Respondent in C.M.A.No.535/2011

1.Ramesh Kumar. .1st respondent/Petitioner
2.Saroja ... 2nd Respondent/ 1st Respondent in C.M.A.No.536/2011
[In both the appeals,
R-2 set ex-parte in Lower Court]

Prayer in both C.M.A.Nos.535 and 536 of 2011: Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 07.01.2009 made in M.C.O.P.Nos.407 and 503 of 2005 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri.

In both C.M.As.
For Appellant : Mr.D.Bhaskaran
For R-1 : Mr.F.Terry Chellaraja
for M/s. M.Malar
For R-2 : Ex-parte
- - - - -

COMMON JUDGMENT

The Insurance Company has preferred the above two civil miscellaneous appeals against the judgment and decree dated 07.01.2009 passed by the learned Subordinate Judge, Motor Accidents Claims Tribunal, Ponneri, in M.C.O.P.Nos.407 and 503

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of 2005 respectively, questioning the liability. As the rash and negligent driving of the driver of the auto and the quantum of compensation arrived at by the Tribunal are not in dispute, the same are hereby confirmed.

2. On the question of liability, the learned counsel appearing for the appellant/insurance company has stated that since both the claim petitions have been arising out of the very same accident, common evidence has been let in and common judgment has been pronounced. Learned counsel appearing for the appellant/insurance company would contend that as per Ex.P.1-F.I.R., seven persons were travelled in the auto, which is a goods vehicle i.e., over and above the seating capacity which is two including the driver which resulted in capsizing of the auto, and therefore, in view of violation of the policy condition, the appellant/insurance company cannot be fastened with liability.

3. Learned counsel appearing for the first respondent in both the appeals/claim petitioners would submit that in the counter statement, no plea has been taken by the insurance company as if the claimants are unauthorized passengers and the plea raised in the counter statement is due to over crowding of seven persons in the auto, the auto capsized and further submitted that as per the nature of the policy, the insurance company is liable to pay compensation to the claimants.

4. After hearing both the parties and after going through the records, it is seen that the first respondent in both the appeals/claimants are the injured persons and they have filed the claim petitions before the Tribunal alleging that on 26.09.2004 at about 2.00 p.m. at Madhavaram High Road, Vadaperumbakkam, when they were travelling in an Auto bearing Registration No.TN-20-Q-1226 towards Ennore to Redhills, the driver of the auto drove the same in a rash and negligent manner and caused the accident. As a result of which, both the claimants have sustained grievous injuries and multiple injuries and hence, they have filed the claim petitions claiming a sum of Rs.1,00,000/- and Rs.3,00,000/- respectively.

5. Before the Tribunal, the appellant herein/insurance company has filed a counter statement in M.C.O.P.No.407 of 2005 stating that there is a delay of 11 days in filing the FIR and as per the copy of the FIR, 7 persons including the driver were travelled in the auto bearing Registration No.TN-20-Q-1226. As per the Vehicle Certificate of R.C. copy, the seating capacity including the driver is only two. But in the counter statement filed in M.C.O.P.No.503 of 2005 even no such plea has been raised by the insurance company.

6. Be that as it may, to substantiate the nature of the accident and the status of the persons travelled in the auto, both the injured/claimants examined themselves as P.W.1 an P.W.2 and they have categorically stated that they are working in Velmurugan Rice Mill, Redhills, Chennai, as coolies. On the notified date fixed for immersing of Ganesh Idol in the Bay of Bengal i.e., on 26.09.2004 around 2.00 p.m., the claimants in both the M.C.O.Ps., along with the co-employees have taken the Ganesh Idol in an auto bearing Registration No.TN-20-Q-1226 and as per the existing Police Order, all of them have taken the Ganesh Idol Procession and went to the notified point namely, 'Ennore C' point and after immersing the Ganesh Idol, they returned to home. At that time, near the turning point, there was a speed break. However, the driver of the auto drove the same in a rash and negligent manner and unable to negotiate the speed break, consequently, the auto capsized and caused injury to the claimants.

7. In the cross-examination, both P.W.1 and P.W.2 have categorically stated that only four persons were travelled in the said auto. But both in the chief examination as well as in the cross-examination, they have categorically stated that when they were returning from Ennore [Thiruvotriyur] area to Senkundram, the place of origin, after immersing the Ganesh Idol, they met with an accident as narrated above.

8. It appears from the cross-examination of P.W.1 and P.W.2 that whether overcrowding in the auto is a cause for capsizing the auto and the said suggestion has been denied by both the witnesses also assumes significance. On a perusal of Ex.P.1-FIR, the factum of the accident and the manner of the accident have been duly corroborated by the oral version of P.W.1 and P.W.2, the injured witnesses. According to the learned counsel for the claimants, the law was set into motion and the evidence of P.W.1 and P.W.2 is to the effect that only two persons have filed claim petitions claiming compensation as they have sustained grievous injuries.

9. At this juncture, it remains to be stated that as per Ex.P.4-Insurance Certificate, the vehicle has been described as a public carrier with seating capacity of 1+1. Both P.W.1 and P.W.2 have categorically stated that they were travelled in the said auto along with the driver near the cabin of driver. As per Ex.R.2, the nature of the vehicle is LMV Mahindra Champion and seating capacity including the driver is two and as per Ex.P.4, the nature of the policy being package policy and the Certificate of Insurance of Goods Carrying [3-wheel and Pedal Cycles) Public Carriers was issued under Form 51 of the Central Motor Vehicle Rules 1989.

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10. In the Schedule of Premium, it is mentioned as follows:-

SCHEDULE OF PREMIUM (In Rs.)

A : OD - BASIC	2.847.02	B : T.P. BASIC	900.00
		Compulsory PA to Owner Cum Driver Amount 200000	100.00
		WC to employee 2	50.00
		Employees Others 1	75.00
		Gross (B) :	1.125
		Gross OD & TP :	3.972
Gross (A) :	2.847	Net Premium :	3.972
Minimum Premium :	Rs.100	Service Tax 8%	Rs.318.00
		Net amount Payable :	Rs.4,290.00

11. Thus, it could be seen that the policy is a package policy besides the driver two workmen and one more employee were allowed and additional premium has been paid. It is not disputed by the insurance company either in the counter statement or during the cross-examination of P.W.1 before the Tribunal that they were travelled in the auto as unauthorized passengers and what was projected in the pleadings during trial was that due to over crowding, auto capsized and as the number of persons travelled is over and above the seating capacity, there is a violation of the policy condition. After perusing Ex.R.2-insurance policy, the persons covered under the policy are as stated supra besides the driver two workmen and one additional workman.

12. It is the specific evidence of P.W.2 that while hiring the vehicle, he travelled in the driver's cabin and the persons have taken the Ganesh Idol for immersing in the sea and it appears from the documentary evidence produced before the Tribunal that after immersing the Ganesh Idol in the notified point in Ennore, they were returning home and at that time, they met with an accident. In view of the undisputed version of P.W.1 and P.W.2, this Court is of the considered view that the accident has taken place due to the rash and

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negligent driving of the driver of the auto and not due to over crowding. In view of the fact that P.W.2 has travelled in the driver's cabin while the others were travelled as a representative of the owner whose Ganesh Idols have been sent for immersing in the sea, the nature of the policy, as extracted above, is clearly applicable and hence, I have no hesitation to hold that the nature of the policy, as could be seen under Ex.R.3 extend coverage to P.W.1 and P.W.2 and hence, the appellant/insurance company is jointly and severally liable to pay compensation to the claimants, though there was no separate discussion on the question of liability of the insurance company by the Tribunal, as stated supra.

13. In view of the reasonings stated in the preceding paragraphs, this Court holds that the appellant herein/insurance company, as per the terms of Ex.R.3-insurance policy, is liable to pay compensation for these two injured witnesses namely P.W.1 and P.W.2.

14. On the point of quantum of compensation, there was no serious dispute with regard to the disability assessed by the Tribunal and accordingly, the consequent compensation arrived at by the Tribunal is hereby confirmed and both the civil miscellaneous appeals are devoid of merits and the same are liable to be dismissed.

15. In the result,

I. Both the Civil Miscellaneous Appeals are dismissed and the common Judgment and decree dated 07.01.2009 made in M.C.O.P.Nos.407 and 503 of 2005 respectively on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Ponneri, is confirmed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

II. If the award amount with accrued interest has not been deposited, the appellant-Insurance Company is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition, less the amount already deposited, if any, to the credit of M.C.O.P.Nos.407 and 503 of 2005 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Ponneri, within a period of eight weeks from the date of receipt of a copy of this Judgment.

III. On such deposit being made, the first respondent in both the CMAs./claimants are

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permitted to withdraw the entire award amount with proportionate interest, less the amount already withdrawn, if any.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

Jrl

To

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Ponneri.

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

+1cc to Mr.D.Bhaskaran , Advocate SR.No. 38478
+2ccs to M/s. M.Malar, Advocate SR.No. 38416

A.SK(02/12/2019)

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