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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos. 912 to 914 of 2015

Ravi Sundar ... Appellant in  
C.M.A.912 of 2015 / Petitioner

Vinayagam ... Appellant in  
C.M.A.913 of 2015 / Petitioner

K.Kumar ... Appellant in  
C.M.A.914 of 2015 / Petitioner

Vs.

1.C.Ravi  
(remained exparte)

2.The Divisional Manager,  
New India Insurance  
Company Limited,  
Thiruvannamalai.

... Respondents in  
all CMAs. / Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2012 made in M.C.O.P.Nos.90 of 2011, 261 of 2011 & 262 of 2011 respectively and on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Tindivanam.

For Appellant : Mr.R.Selvakumar  
in all CMAs

For Respondent No.2 : Mr.S.Manohar  
in all CMAs

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 17.11.2012 made in M.C.O.P.Nos.90 of 2011, 261 of 2011 & 262 of 2011 respectively on the file of the Motor Accidents Claims Tribunal, (II Additional District Judge), Tindivanam.



3. All the appeals arise out of the same accident and hence, disposed of by this Court as common judgment.

5. The appellants have come out with the present appeals, challenging the portion of the award exonerating the second respondent / Insurance Company of its liability and for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent contended that the appellants travelled in the goods carriage as unauthorised passengers and they did not travel as the owner of the goods in the commercial vehicle. Only names of Saravanan and Murugan were mentioned in the FIR as persons who



travelled along with their goods. Names of the appellants were not found in the FIR as the owner of the goods. The Tribunal, considering the materials available on record, rightly held that the appellants are unauthorised passengers and exonerated the second respondent insurance company and the amounts awarded by the Tribunal are excessive and the appellants are not entitled for enhancement of compensation and prayed for dismissal of the appeals.

8. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the second respondent/Insurance Company and perused the materials available on record.

9. From the materials available on record, it is seen that the appellants herein have filed their respective claim petitions stating that while they travelled in the Mini Lorry belonging to the first respondent along with their goods as owners, the accident occurred due to rash and negligent driving by the driver of the Mini Lorry belonging to the first respondent. The second respondent in the counter statement did not deny that the appellants travelled in the Minor lorry at the time of the accident and they sustained injuries. The contention of the learned counsel appearing for the second respondent is that names of the appellants did not find place in the FIR, who travelled in the Mini Lorry as owner of the goods and hence, the appellants are unauthorised passengers. The Tribunal also, considering Ex.P1, FIR, held that the appellants are unauthorised passengers. The said reasoning of the Tribunal is erroneous. The appellants as PW1 to PW3 have deposed that they travelled in the Mini Lorry as owner of the goods i.e. drumsticks. The respondents have not examined the driver of the Mini lorry or the owner or any other independent witness to disprove the contention of the appellants. The second respondent examined only an assistant from the Insurance Company as RW1, who deposed about the premium paid by the first respondent. The Tribunal erroneously held that as per the policy condition, only two passengers can travel in the mini lorry belonging to the first respondent. The tribunal failed to consider that as per Rule 236 of the Tamil Nadu Motor Vehicle Rules, maximum 6 persons can travel in a commercial goods vehicle and the said rules is as follows:

236. Limit of persons in goods carriage.—No person shall be carried in the cabin of a goods carriage beyond the number, for which there is a seating accommodation at the rate of thirty



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eight centimetrs measured along the seat, excluding the space reserved for the driver, for each person, and not more than six persons in all in addition to the driver shall be carried in any goods carriage."

10.A Division Bench of this Court considered the said Rule and held that 6 persons can travel in the goods vehicle and the insurance company is liable to pay compensation for the injury or death and the persons are permitted to travel in the backside of the vehicle along with the goods. The respondents have not let in any evidence to disprove the contention of the appellants that they travelled in the Mini Lorry along with their goods. For the above reasons, considering the evidence of the appellants as PWs 1 to 3, Section 147 of the Motor Vehicles Act and Rules 236 of the Tamil Nadu Motor Vehicles Rules, this Court is of the considered view that the Tribunal erred in exonerating the second respondent insurance company from its liability to pay the compensation. The award of the Tribunal exonerating the second respondent is set aside and both the respondents are liable to pay compensation awarded to the appellants jointly and severally. The amounts awarded by the tribunal are not meagre and the appellants are not entitled to any enhancement.

11.Accordingly, the Civil Miscellaneous Appeals are partly allowed. The respondents are directed to deposit entire award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants/claimants are permitted to withdraw the entire award amount awarded by the Tribunal in their respective cases, less the amount, if any, already withdrawn. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

sms/pds



To

1. The Motor Accidents Claims Tribunal,  
(II Additional District Judge), Tindivanam.

2. Mr.C.Ravi,  
S/o.Chandrasahsan,  
No.8A/6, Marimuthu Street,  
Manjukuppam,  
Cuddalore District.

3. The Divisional Manager,  
New India Insurance Company Limited,  
Thiruvannamalai.

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

+1 cc to Mr.B.Thirunavukkarasu, Advocate, S.R.No.4984

+1 cc to Mr.S.Manohar, Advocate, S.R.No.4692

C.M.A.Nos. 912 to 914 of 2015

VGI (CO)  
SSM(31/07/2019) .