

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1413 to 1417 of 2011

M/s Royal Sundaram Alliance
Insurance Company Limited,
No.45/46, Whites Road,
Chennai-600 014.

...Appellant in all cases/2nd Respondent

Vs.

C.M.A.No.1413 of 2011

1.Sumathi

2.G.Venkatesan

(R2 set Exparte in Lower Court) ...Respondents/Petitioners

C.M.A.No.1414 of 2011

1.Sulli

2.Selvaraj

3.Mahalingam

4.Shanthi

5.Anjala

6.G.Venkatesan

(R6 set Exparte in Lower Court) ...Respondents/Petitioners

C.M.A.No.1415 of 2011

1.Saroja

2.G.Venkatesan

(R2 set Exparte in Lower Court) ...Respondents/Petitioners

C.M.A.No.1416 of 2011

1.Poongavanam

2.G.Venkatesan

(R2- Set exparte in Lower Court) ...Respondents/Petitioners

C.M.A.No.1417 of 2011

1.Amsa

2.G.Venkatesan

(R-2 Set Exparte in Lower Court) ... Respondents/Respondents

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgments and decree dated 08.11.2010 made in M.C.O.P.Nos.318, 319, 320, 323 & 341 of 2009 on the file of Motor Accident Claims Tribunal,

Additional District and Sessions Judge, Fast Track Court No.I,
Poonamallee.

For Appellant : Mrs.R.Sreevidhya
(in all C.M.As.)

For Respondents : Mr.C.Richard Suresh Kumar for
Mr.G.Mannarmannan for R1
(in all C.M.As) & for R1 to 5
in CMA.1414/2011)
: R2- Exparte (in all C.M.As except
in CMA.1414/2011)

R6-Exparte in CMA NO.1414/2011

COMMON JUDGMENT

The appellant M/s Royal Sundaram Alliance Insurance Company Limited, has filed these batch of Civil Miscellaneous Appeals, aggrieved against the judgment and decree passed by the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.I, Poonamallee.

2. The facts of the cases necessary for disposal of these appeals are as follows:

It is the case of the respondents/claimants that on 22.03.2009 at about 09.00 hours, when they were travelling in a van bearing Regn.No.TN-22-AT-8309 from Vanagaram to Tambaram, near Kovur in front of Marvadi Kalyanamandapam, the van driver lost his control and the van capsized. As a result of the accident, one person by name Velu died and rest of them got severe injuries.

3. The injured persons filed M.C.O.P.Nos.319, 320, 323 & 341 of 2009 and the legal heirs of the deceased Velu filed M.C.O.P.No.318 of 2009.

4. The claimants have claimed various amounts as compensation, in connection with the accident that took place on 22.03.2009. In order to prove the case, on the side of the claimants, 6 witnesses were examined and 19 documents were marked. The series of the X-rays were marked as Material Objects.

5. The owner of the offending vehicle remained ex-parte and despite notice being served, he did not chose to appear before the Court. Therefore, the appellant herein, arrayed as second respondent in the Court below, filed a counter and denied the

case. On the side of the respondent, one witness was examined and three documents were marked.

6. The learned Tribunal after analyzing the entire evidence orally and documentary held that the claimants are entitled to get compensation and the Insurance Company is liable to pay the said cost.

7. The Tribunal has awarded a sum of Rs.54,500/- in M.C.O.P.No.318 of 2009, Rs.4,00,000/-in M.C.O.P.No.319 of 2009, Rs.52,000/- in M.C.O.P.No.320 of 2009, Rs.63,000/- in M.C.O.P.No.323 of 2009 and Rs.50,000/- in M.C.O.P.No.341 of 2009.

8. Challenging the said judgments and decree, the appellant has come forward with these Civil Miscellaneous Appeals.

9. The learned counsel for the appellant vehemently contended that the Tribunal has lost the state of the fact that the van, in which the claimants travelled as passengers, is a good carriage vehicle and persons were allowed to travel as passengers on payment of money. The learned counsel drew attention of the Court by stating that as per the policy conditions, only those persons are liable to travel in the said vehicle and even as per FIR, a total number of 13 persons have travelled in the vehicle at the time of the accident. Learned counsel for the appellant drawn the attention of this Court to the fact that all the claimants have claimed themselves to be the fish vendors and they were transporting fish from Maduravoil to Urapakkam. Even the deceased was also a fish vendor and he has travelled as a passenger on payment of money to the driver. The learned counsel also drew the attention of the fact that the Tribunal has failed to appreciate the fact that all the passengers cannot be considered as owners of goods and they have travelled by paying money to the driver, which is against the policy conditions. The learned counsel also submitted that the claimants and the deceased were not engaged by the owner of the vehicle to travel in the van on the fateful day. In short, the learned counsel urge this Court by stating that the persons who travelled in the van cannot be considered as owner of the goods and they have travelled only by paying money to the driver. Therefore, the learned counsel contended that the judgment and decree of the Trial Court and the learned Tribunal is to be set aside.

10. The learned counsel for the first respondent supported the order of the learned Tribunal and submitted that the claimants are poor people and they have travelled in the said van only on payment of charges to the driver and they were only transporting fish from Maduravoil to Urapakkam. Since the driver of the vehicle has not entered appearance and the vehicle had valid insurance policy on the date of the accident, the learned counsel submitted that the Tribunal was correct in awarding compensation to the claimants.

11. I have heard the learned counsel on either sides and perused the materials available on record.

12. This Court is in agreement with the submissions made by the learned counsel for the Insurance Company. The vehicle that capsized on the fateful day was a goods carrier van and as per the policy conditions, only 6 persons are eligible to travel in the said vehicle. Even though 6 persons should be connected with the goods carriage in the vehicle or as per the direction of the owner of the vehicle, it is seen in this case, even as admitted by the victims and as seen from the FIR which is marked as Ex.P1, the claimants and the deceased travelled in the vehicle after purchasing fish from the fish market and they were on their way to Maduravoil to Urapakkam.

13. Admittedly, the claimants paid money to the van driver for travelling from Maduravoil to Urapakkam for taking their fish. As rightly pointed by the learned counsel for the appellant, they are not totally in connection with the van. Here, the fishes were not transported as goods, but it was only transported as luggage. The claimants have admitted that they were in need to pay money for such transport from fish market to Urapakkam. In this case, the fish was not transported as goods and it was transported only as luggage along with the persons who travelled in the van. Therefore, the Insurance Company is right in its contention that the policy condition was grossly filed by taking in passengers for money as along the luggage to be carried along with them. Likewise, the claimants and the deceased were not engaged by the owner of the vehicle at any work in the goods carrier or any work related to it.

14. Therefore, the Insurance Company cannot be fastened liable to pay the compensation for the lives that were lost and injuries that were sustained by the other claimants. Conveniently, the owner of the offending vehicle remained ex-parte. Just because the vehicle is under the insurance cover,

the Insurance Company cannot be fastened liable to pay the compensation for the wrongful act committed by the owner of the vehicle.

15. In the result, the present appeals are allowed and the judgments and decree passed by the learned Tribunal, are hereby set aside. No costs. The claimants are at liberty to proceed against the owner of the offending vehicle.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn
To

1.The Motor Accident Claims Tribunal,
Additional District and Sessions Judge,
Fast Track Court No.I,
Poonamallee.

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

+5ccs to Mr.G.Mannar Mannan, Advocate Sr.12805 to 12809
+1cc to M/s.R.Sreevidhya, Advocate Sr.13025

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