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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1190 and 1191 of 2016
and
C.M.P.Nos.8990 and 8991 of 2016

The Branch Manager,
The New India Assurance Company Ltd.,
No.1, Bhararhi Road, 2nd Floor,
Arcot Woodlands Compound, Cuddalore-1.

.. Appellant/2nd Respondent
in C.M.A.No.1190 of 2016

/versus/

1.Ms.Chinna Ponnu

2.Mr.K.Ramadoss

.. Respondents/Petitioner
in C.M.A.No.1190 of 2016

Prayer in C.M.A.No.1190 of 2016: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 6th August, 2015 passed in M.C.O.P.No.72 of 2011 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Neyveli.

C.M.A.No.1190 of 2016:

For Appellant :Mr.G.Uday Sankar

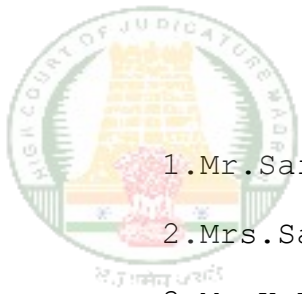
For Respondents:No appearance

C.M.A.No.1191 of 2016:

The Branch Manager,
The New India Assurance Company Ltd.,
No.1, Bhararhi Road, 2nd Floor,
Arcot Woodlands Compound, Cuddalore-1.

.. Appellant /2nd Respondentin
C.M.A.No.1191 of 2016

/versus/



1.Mr.Saravanan

2.Mrs.Santi

3.Mr.K.Ramadoss

.. Respondents 1 &2/Petitioners

..3rd Respondent/Respondent in
C.M.A.No.1191 of 2016

Prayer in C.M.A.No.1191 of 2016: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 6th August, 2015 passed in M.C.O.P.No.74 of 2011 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Neyveli.

C.M.A.No.1191 of 2016:

For Appellant : Mr.G.Uday Sankar

For Respondents : No appearance

COMMON JUDGMENT

(The case has been heard through Video Conferencing)

Heard the learned counsel appearing for the appellant.

2.These appeals are preferred against the award passed by the Tribunal, confirming the plea taken by the Insurance Company that there is a violation of policy condition by the owner of the vehicle, who permitted 20 passengers in a goods vehicle and the accident caused to the claimants, while they were travelling in the goods vehicle as an unauthorised passengers. However, since the Tribunal has ordered pay and recovery, the present appeals are filed on the short point that when the owner of the vehicle contested the claim petitions appeared through their counsel, the question of pay and recovery will not arise and decree should have been passed only against the owner of the vehicle.

3.The learned counsel appearing for the appellant/Insurance Company would point out that even in the present appeals, the owner of the vehicle is represented through a counsel by name Mr.Saran Raj.

4.In the light of the above submission, this Court looks into the facts of the case. As per the First Information Report on 11.09.2011 at about 01.00 clock, on the Jawaharlal Nehru Road, Madha Church, Neyveli Town, the claimants and others while travelling in the TATA Ace Mini Door bearing Reg.No.TN-31-AT 1504 to attend the marriage of their relative, due to the rash and negligent driving of the TATA Ace Driver, the vehicle hit nearby a Electric Post. The persons travelling in the TATA Ace sustained injury and the first respondent in both the cases



namely, Chinna Ponnu and Saravanan sustained injury leading to filing of claim petitions.

5. First Information Report was given by one Kaliyamoorthy, who is one of the injured passengers. The state of the informant was recorded in the hospital by the Police based on the intimation received by NLC GH. The insurance coverage which is marked as Ex.P4, reveals that the vehicle was insured under the appellant/Insurance Company for the period from 14.02.2011 to 13.02.2012 midnight. The vehicle being a goods carrier and act only policy the premium for the third party risk alone been paid with compulsory personal accident cover for owner-cum-driver. The Tribunal while considering the coverage of the insurance has rightly held that it was a violation of policy condition, however, has directed the Insurance Company to pay the compensation amount and recover the same from the insurer. The legal issue raised by the learned counsel appearing for the appellants that the principle of pay and recovery will apply, when the vehicle owner who has violated the policy condition is liable to pay the amount and the insurance company got leave of the Court under Section 170 of the Motor Vehicles Act to contest the case on merits. When the vehicle owner himself appeared and contested the case through counsel and as party before the Tribunal, the substitute route of pay and recovery need not be applied and the decree ought to have been directly passed against the vehicle owner, who has violated the policy condition allowing 20 passengers travelling in the goods vehicle.

6. This Court is fully convinced in the legal submission made by the learned counsel appearing for the appellants. When there is a fundamental violation of the policy condition against the owner, who is the party in the proceedings, the liability to pay the compensation should be directed against the owner of the vehicle on the said sole ground.

7. Accordingly, these Civil Miscellaneous Appeals are allowed. The claimants are entitled to recover the award amount from the owner of the vehicle following the procedure laid down in Nanjappa v. State of Karnataka.

8. In the result, these Civil Miscellaneous Appeals are allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar



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To:

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1. The Motor Accident Claims Tribunal,
Subordinate Court, Neyveli.

2. The Section officer, VR Section
High Court Madras.

+2cc to M/s. G.Udayasankar, Advocate, Sr.No. 35993,35992

C.M.A.Nos.1190 and 1191 of 2016
and
C.M.P.Nos.8990 and 8991 of 2016

CNR (CO)
RMP (13/05/2021)