

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.Nos.1831, 1832 and 1833 of 2013
and M.P.Nos.1, 1 and 1 of 2013

CMA.No.1831 of 2013

The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.19, Officer's Line, 1st Floor,
Opp. Lakshmi Theatre,
Vellore.

...Appellant/2nd Respondent

vs.

1.Mr.Paneerselvam ...1st Respondent/ Petitioner

2.Mrs.Muniammal ...2nd Respondent/ 1st Respondent

CMA.No.1832 of 2013

The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.19, Officer's Line, 1st Floor,
Opp. Lakshmi Theatre,
Vellore.

...Appellant/2nd Respondent

vs.

1.Mrs.Jothi

2.Mrs.Jayapriya

3.Mrs.Pachaiammal ... Respondents 1 to 3/ Petitioners

4.Mrs.Muniammal ... 4th Respondent/1st Respondent

CMA.No.1833 of 2013

The Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.19, Officer's Line, 1st Floor,
Opp. Lakshmi Theatre,
Vellore.

..Appellant/2nd Respondent
vs.

1.Mrs.Chennammal ...1st Respondent/ Petitioner

2.Mrs.Muniammal

... 2nd Respondent/1st Respondent

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.288 of 2006, M.C.O.P.No.677 of 2007 and M.C.O.P.No.402 of 2006 on 04.10.2012 on the file of the Learned Motor Accident Claims Tribunal, (Principal Subordinate - Judge) at Tiruvannamalai District.

For Appellant in all CMAs : Mr.J.Chandran
For Respondents in all CMAs : R1 - served -
No appearance
Mr.S.Kumaradevan for R2
2.Mr.B.Jawahar for R1 to R3
in CMA.No.1832 of 2013
3.Mr.S.Kumaradevan for R2
Mr.B.Jawahar for R1
in CMA.No.1833 of 2013

COMMON JUDGMENT

(This case was heard through Video Conferencing)

These Three appeals have been filed by the Insurance Company challenging the common Award dated 04.10.2012 passed by the Motor Accident Claims Tribunal (Principal Subordinate - Judge) at Tiruvannamalai District in MCOP.No.288/06, 677/07 and 402/06 which are the subject matters of CMA Nos.1881, 1832 and 1833 of 2013 respectively.

2.Heard Mr.J.Chandran, learned counsel for the Appellant and Mr.S.Kumaradevan, learned counsel for the second respondent.

3.The Appellant Insurance Company has filed these appeals questioning its liability to pay the compensation to the respective claimants on the ground that the claimants were gratuitous passengers travelling in the insured goods vehicle at the time of the accident. Further, it is their contention that the insured goods vehicle carried persons beyond its permissible capacity.

4.In a connected appeal involving the same accident and the same insured vehicle, another claimant by named Mr.Dhandapani who had travelled in the same insured vehicle, which is the subject matter of these appeals also, a learned Single Judge of this Court by her judgment dated 23.01.2020 passed in CMA No.1991 of 2013 (V.Bhavani Subbaroyan, J.) allowed the appeal filed by the Insurance Company by reversing the finding of the Tribunal by giving a categorical finding that the insured van is a goods vehicle and the claimants and his relatives travelled in the goods vehicle to attend the earboring ceremony of his relative in violation of the policy conditions and hence held that the Insurance Company is not

liable to indemnify the insured. Even, as per the respective claim petitions filed by the respective claimants in this appeals also, they have admitted that they were travelling in the insured goods vehicle only to attend the earboring ceremony of their relative.

5.It is settled law in case of goods vehicle, a gratuitous passenger cannot be compensated by the insured since carrying gratuitous passenger in a goods vehicle is a policy violation. This Court is in agreement with the view taken by another learned Single Judge of this Court in the connected appeal CMA No.1991 of 2013 as referred to supra. Therefore, as held in the connected appeal in CMA No.1991 of 2013, these appeals which have been filed on the same grounds have to be necessarily allowed.

6.Accordingly, all the three appeals namely CMA Nos.1831, 1832 and 1833 of 2013 are allowed. However, the claimants in all the three appeals are granted liberty to proceed against the owner of the vehicle for recovery of the compensation amount in accordance with law.

7.In view of allowing these appeals, the Appellant is permitted to withdraw the amount that they have deposited to the credit of the respective MCOPs, which are the subject matter of these appeals by filing an appropriate application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

pam

To

- 1.The Motor Accident Claims Tribunal,
(Principal Subordinate - Judge) at Tiruvannamalai District.
- 2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.Mr.S.Kumaradevan , Advocate SR.No. 26355

C.M.A.Nos.1831, 1832 and 1833 of 2013

A.SK(19.01.2021)