IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1521 of 2016
C.M.P.No.11635 of 2016

Branch Manager,
Oriental Insurance Company Limited,
Having Office at Katpadi Road,
Gudiyattam,Vellore District. ..Appellant/2nd Respondent

Vs.

1.Kalyani
2.Kalaivani
3.Kalaiselvam
4.Kalaimathi ...Respondents 1-4/Petitioners

5.M/s.A.P.S.Engineers,
Having Office at No.34,
Pudhu Street, Cholapuram,
S.M.Nagar, Chennai-600 062. ..5th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 09.02.2016 made in M.C.O.P.No.28 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gudiyatham.

For Appellant : Mr.S.Arunkumar

For Respondents: Mr.V.Perumal
for Mr.T.Dhanyakumar
for RR1, 2 & 4

No-appearance for R5
R3-Died

WEB COPY

J U D G M E N T

The appeal is filed challenging the judgment and decree dated 09.02.2016 passed in M.C.O.P.No.28 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Gudiyatham.

2. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the

https://hcservices.ecourts.gov.in/hcservices/

claimants are gratuitous passengers and they are not even load men and they are traveling in an unauthorized manner and even as per FIR, they stopped the vehicle and got into the vehicle and traveled in the goods career. Therefore, they are unauthorized passengers and there is no coverage of policy. Thus, the Tribunal has committed an error in fixing the liability on the appellant/Insurance Company.

3. The learned counsel appearing on behalf of the appellant reiterated that with reference to the very same accident, the Motor Accident Claims Tribunal, Vellore passed an order in M.C.O.P.No.21 of 2012, wherein the liability was fixed on the owner of the vehicle and the Insurance Company was exonerated. When one claim petition in relation to the same accident was ordered by holding that the owner of the vehicle was responsible, then in a subsequent claim petition, the Tribunal has committed an error in fixing the liability on the owner and directing the Insurance Company to pay and recover the amount. Two different orders were passed by the Tribunal, with reference to the very same accident and the claim petitions were filed by different persons.

4. The learned counsel appearing on behalf of the claimants/respondents made a submission that the claimants were traveling as load men and therefore, they cannot be treated as unauthorized passengers. They have traveled for the purpose of loading and unloading goods and therefore, they are entitled for compensation.

5. This Court is of the considered opinion that undoubtedly, the injured persons are entitled for compensation. However, who should pay the compensation is the question, to be decided. The Tribunal in M.C.O.P.No.21 of 2012 held that the claimants are entitled for compensation, however they are unauthorized passengers, therefore, the owner of the vehicle has to pay compensation. As far as the present appeal is concerned, with reference to M.C.O.P.No.21 of 2012, the Tribunal rightly concluded that the claimant is entitled for compensation, however, directed the Insurance Company to pay and recover the amount from the owner of the vehicle.

6. This Court is of the considered opinion that the payment of compensation is a contractual obligation. The compensation to be paid is to be decided with reference to permit granted for a particular vehicle as well as the policy coverage. In the present case, the vehicle, which involved in the accident, is a goods carrier. As per the Registration certificate, permit is granted for 2+1. As per the FIR, six persons were traveling in the goods carrier. All those passengers are unauthorized passengers and FIR reveals that those persons stopped the vehicle and got inside the goods vehicle, therefore, they sustained injury. This being the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

factum established, the Tribunal is right in arriving a conclusion that the owner of the vehicle is responsible to pay the compensation. However, pay and recovery was ordered. The pay and recovery can be ordered under Section 149(4) of the Motor Vehicles Act only on certain circumstances, when the insured vehicle met with an accident and the driver of the vehicle is not having endorsement or also valid driving license. However, in respect of unauthorized passengers, pay and recovery cannot be ordered by the Tribunal. In such circumstances, the purpose and object of the contractual obligation would be defeated.

7. The Insurance Company is obligated to settle the compensation strictly with reference to the terms and conditions of the policy. It is not as if the Insurance Company is liable to pay compensation in all such cases of accident. It is to be established before the Tribunal that the Insurance Company is liable to pay compensation with reference to the policy conditions. If there is any violation of policy conditions, then in certain circumstances, pay and recovery can be ordered. However, with reference to the statutory violations and unauthorized passengers, such pay and recovery cannot be ordered and in the event of pay the recovery ordered in such illegal cases, then the very contractual obligation and its purpose are defeated. Therefore, the Insurance Company cannot be held liable to pay compensation in respect of unauthorized passengers traveling in a goods vehicle. This being the facts and circumstances, the Tribunal has committed an error in ordering pay and recovery. Accordingly, the Judgment and Decree dated 09.02.2016 made in M.C.O.P.No.28 of 2011 is set aside. The claimants are at liberty to file an execution petition to recover the damages from the owner of the vehicle/first respondent in the claim petition. However, the appellant/Insurance Company is not liable to pay compensation. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-VI)

WEB COPY

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal,
Sub Court, Gudiyatham.

+1cc to Mr.T.Dhanyakumar, Advocate SR.24194

https://hcservices.ecourts.gov.in/hcservices/

+1cc to Mr.S.Arun Kumar, Advocate SR.23951

C.M.A.No.1521 of 2016

KS(CO)
CB(08/01/2021)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/