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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos.2442 & 2443 of 2013  
and M.P.Nos. 1 & 1 of 2013

M/s. The Oriental Insurance Co. Ltd.,  
Branch Office, No.90A, Thuraiyur Salai,  
Namakkal. ... Appellant/2<sup>nd</sup> Respondent  
in both the appeals

Vs.

1.Arumugam ... 1<sup>st</sup> Respondent/Petitioner in  
C.M.A.No.2442/2013

1.Srinivasan ... 1<sup>st</sup> Respondent/Petitioner in  
C.M.A.No.2443/2013

2.R. Rangaraju ... 2<sup>nd</sup> Respondent/Respondent  
in both the appeals

(R2 remained exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under  
Section 173 of Motor Vehicles Act, 1988, against the common  
award dated 06.08.2012, made in M.C.O.P. Nos.420 & 422 of 2003,  
on the file of the Sub Court, (Motor Accident Claims Tribunal),  
Namakkal.

(In both appeals)

For Appellant : Mr. M. Krishnamoorthy

For Respondents: Mr. C. Thangaraju (For R1)  
No appearance (For R2)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

These appeals have been filed against the common judgment  
and decree dated 06.08.2012, made in M.C.O.P. Nos.420 & 422 of  
2003, on the file of the Sub Court, (Motor Accident Claims  
Tribunal), Namakkal.



2. Both the appeals arise out of the same accident and common award. Hence, they are disposed of by this common judgment.

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3. The appellant in both the appeals is the 2<sup>nd</sup> respondent-Insurance Company in M.C.O.P. Nos. 420 & 422 of 2003, on the file of the Sub Court, (Motor Accident Claims Tribunal), Namakkal. The 1<sup>st</sup> respondent in both the appeals filed the said claim petitions, claiming a sum of Rs. 7,00,000/- and Rs. 5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 23.07.2002.

4. According to the 1<sup>st</sup> respondent in both the appeals, on the date of accident, they were traveling as Coolie in a Minidor Auto bearing Registration No. TN-28-H-7122, belonging to the 2<sup>nd</sup> respondent, at Namakkal to Thuraiyur Main road. Near Pottireddipatti Bus Stop, the driver of the Minidor Auto drove the vehicle in a rash and negligent manner without observing the road traffic rules and dashed against an on-coming TNSTC Bus bearing Registration No. TN-27-N-1169 and caused the accident. In the accident, the 1<sup>st</sup> respondent in both the appeals sustained grievous injuries and thus, filed the claim petitions, claiming compensation against the appellant as insurer and 2<sup>nd</sup> respondent, as driver of the offending vehicle.

5. The 2<sup>nd</sup> respondent remained exparte before the Tribunal.

6. The appellant-Insurance Company filed separate counter statements and denied all the averments made by the 1<sup>st</sup> respondent in their respective claim petitions. According to the appellant-Insurance Company, as per the investigation report, when the 1<sup>st</sup> respondent in both the appeals and one Thiruvankadam traveled in the said Minidor Auto along with the advertisement banner of Alagappa University to erect the same in Electric Posts, the TNSTC Bus came from the opposite direction in a rash and negligent manner and dashed against the Mini Auto and caused the accident. The Minidor Auto is only a Goods Carriage vehicle and not a passenger vehicle. The 2<sup>nd</sup> respondent has violated the policy conditions by letting three persons to travel as unauthorized passengers in the cabin of the said vehicle and hence, the appellant-Insurance Company is not liable to indemnify the 2<sup>nd</sup> respondent. The claim petitions are bad for non-joinder of owner and driver of TNSTC Bus. In any event, the 1<sup>st</sup> respondent in both the appeals have to prove their age, avocation and income, injuries suffered, disability sustained and treatment taken to claim compensation and prayed for dismissal of both the claim petitions.



7. Before the Tribunal, the 1<sup>st</sup> respondent in both the appeals examined themselves as P.W.2, P.W.1 respectively, examined Doctor as P.W.3 and marked 16 documents as Exs.P1 to P16. The appellant examined one Manoharan as R.W.1 and marked 3 documents as Exs.R1 to R3.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Minidor Auto belonging to the 2<sup>nd</sup> respondent and directed the appellant as insurer of the said vehicle to pay a sum of Rs.1,14,915/- and Rs.49,519/- as compensation to the 1<sup>st</sup> respondent in both the appeals respectively.

9. Against the said common award dated 06.08.2012, made in M.C.O.P. Nos.420 & 422 of 2003, the appellant-Insurance Company has come out with the present appeals.

10. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that the 1<sup>st</sup> respondent in both the appeals traveled in the Minidor goods vehicle as unauthorized passengers. The seating capacity of the vehicle is only one, for the driver and more persons cannot travel in the goods vehicle. The owner of the vehicle, 2<sup>nd</sup> respondent has violated the policy conditions and hence, the appellant is not liable to pay any compensation. The Tribunal ought to have exonerated the appellant as no coverage was given to the 1<sup>st</sup> respondent in both the appeals who have allegedly travelled as Coolie. The Tribunal ought to have dismissed the claim petitions as accident has occurred due to rash and negligent driving by the driver of the Bus and non-joinder of proper and necessary parties for proper adjudication. The Tribunal failed to consider the evidence of R.W.1 and Exs.R2 and R3, certified copies of the decree in M.C.O.P.No.138 of 2003 to prove that connected case filed by one Thiruvengkadam was dismissed for non-joinder of TNSTC and claimant traveled in the goods vehicle. There cannot be different finding by different Courts on the same set of facts and prayed for setting aside the award of the Tribunal.

11. Though notice has been served on the 2<sup>nd</sup> respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

12. Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1<sup>st</sup> respondent in both the appeals and perused the materials available on record.



13. It is the contention of the 1<sup>st</sup> respondent in both the appeals that they travelled as Coolie in Minidor Auto belonging to the 2<sup>nd</sup> respondent and driver of the Minidor Auto drove the vehicle in a rash and negligent manner and dashed against the TNSTC Bus and caused the accident. The 1<sup>st</sup> respondent in both the appeals filed claim petitions claiming compensation for the injuries sustained by them. To substantiate their contention, they examined themselves as P.W.2 and P.W.1 respectively and marked FIR as Ex.P1, which was registered against the driver of the Minidor Auto. It is the contention of the appellant-Insurance Company that the accident occurred only due to rash and negligent driving by the driver of the TNSTC Bus and claim petitions are bad for non-joinder of necessary parties. It is the further contention of the appellant that the offending Minidor vehicle is a goods vehicle and 1<sup>st</sup> respondent in both the appeals travelled as unauthorized passengers. The appellant has not examined any eye-witness to substantiate their contention that the accident occurred only due to rash and negligent driving by the driver of the TNSTC Bus. Further, in the counter statements, it is the contention of the appellant that the 1<sup>st</sup> respondent in both the appeals travelled along with one Thiruvankadam in the Minidor Auto with advertisement board of Alagappa University to affix the same in the electric posts. This very stand shows that the 1<sup>st</sup> respondent in both the appeals travelled as authorized representative of owner of the advertisement banners. As per Section 147 of the Motor Vehicles Act, the owner of the goods or its authorized representative can travel in the goods vehicle along with their goods. The judgment in M.C.O.P.No.138 of 2003 filed by Thiruvankadam is not binding on the Tribunal as the Tribunal has to decide the issue based on the materials placed before it. The Tribunal considering the evidence of P.W.1, P.W.2, Ex.P1 - FIR, failure on the part of the appellant to prove that the accident occurred only due to negligence on the part of the TNSTC Bus and that as per Rule 236 of the Tamil Nadu Motor Vehicles Rules, six persons can travel in the goods vehicle, held that the appellant is liable to pay compensation. The reasoning of the Tribunal is valid and does not warrant interference by this Court.

14. As far as quantum of compensation is concerned, the Tribunal considering the evidence of 1<sup>st</sup> respondent in both appeals, nature of injuries and the evidence of P.W.3 - Doctor, has awarded compensation under different heads, which are not meagre. There is no error in the common award of the Tribunal warranting interference by this Court.

15. In the result, both the appeals are dismissed and the amounts awarded by the Tribunal at Rs.1,14,915/- and Rs.49,519/- respectively along with interest and costs are confirmed. The



appellant-Insurance Company is directed to deposit the award amount, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. Nos.420 & 422 of 2003. On such deposit, the 1<sup>st</sup> respondent in both the appeals are permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa  
To

The Subordinate Judge,  
(Motor Accident Claims Tribunal),  
Namakkal.

Copy to

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

C.M.A. Nos.2442 & 2443 of 2013  
and M.P. Nos. 1 & 1 of 2013

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