BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.11.2020
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.(MD)Nos.353 & 357 of 2008
and
C.R.P.(NPD)(MD)Nos.433 & 434 of 2008
and
M.P.(MD)Nos.1, 1 and 1 of 2008

The Branch Manager,
The New India Assurance Company Ltd.,
34, Alagar Koil Road,
Madurai District. ... Appellant in
C.M.A.(MD)Nos.353 & 357 of 2008
C.R.P.(NPD)(MD)Nos.433 & 434 of 2008

Vs

1. Nallammal @ Nadanthal
2. T.Maheswari ... Respondents in
C.M.A(MD)No.353/2008

1. Chinnathal
2. T.Maheswari ... Respondents in
C.M.A(MD)No.357/2008

1. Indirani
2. T.Maheswari ...Respondents in
C.R.P.(NPD)(MD)No.433/2008

1. Pothumponnu
2. T.Maheswari ... Respondents in
C.R.P.(NPD)(MD)No.434/2008

C.M.A(MD)Nos.353 & 357 of 2008 filed under Section 173 of the Motor Vehicles Act against the award dated 19.10.2007 and made in M.C.O.P.Nos.127 and 125 of 2005 respectively, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Pudukkottai.

C.R.P(NPD)(MD)Nos.433 & 434 of 2008 filed under Article 227 of Constitution of India, against the award dated 19.10.2007 and made in M.C.O.P.Nos.124 and 126 of 2005 respectively, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Pudukkottai.

For appellant in
C.M.A.(MD)Nos.353 & 357 of 2008
C.R.P.(NPD)(MD)Nos.433 & 434 of 2008 : Mr.K.Murugesan

For R1 in C.M.A.(MD)No.353 & 357 of 2008 and
C.R.P.(NPD)(MD)No.433 & 434 of 2008 : No appearance

COMMON JUDGMENT

Since the present batches of cases have been preferred against the common order dated 19.10.2007, passed by the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Pudukkottai, (in short, 'the Tribunal'), in the Motor Accident Claims Original Petitions, arising out of the same accident that had occurred on 26.08.2004, they are heard together and are decided by this common judgment.

2.The brief facts of the case are as follows:

On the fateful day, i.e., on 26.08.2004, at about 6.00 p.m., one Nallammal @ Nadanthal and others, were travelling in a lorry bearing Registration No.TN 59 F 0144 belonging to one Maheswari/second respondent and insured with the New India Assurance Company Limited, which is the appellant in C.M.A.(MD)Nos.353 & 357 of 2008 and the petitioner in C.R.P.(NPD)(MD)Nos.433 & 434 of 2008 for loading and unloading the goods. When the lorry reached near Poolangkurichi Peepul Tree Bus stand, due to rash and negligent driving of the driver of the vehicle, it stepped into the pit. As a result of the same, the driver lost his control over the vehicle, which ultimately capsized on the road. Consequent to the same, the first respondent(s)/claimants sustained grievous injuries. Stating that the accident had occurred only due to the rash and negligent driving on the part of the driver of the lorry, the injured filed claim petitions before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded compensation and the details of the same are as under:

CMA/CRP No.	***MCOP No.***	***Amount of compensation (Rs.)***
353/2008	127/2005	60,200/-
357/2008	125/2005	35,110/-
433/2008	124/2005	8,000/-
434/2008	126/2005	7,000/-

These amounts have been awarded, with interest at the rate of 7.5% per annum from the respective dates of petitions. Giving a finding that the accident had occurred only due to the rash and negligent driving of the driver of the lorry, the Tribunal fixed the liability on the insurer as well as insured of the lorry jointly and severally to pay compensation to the claimants. Challenging the same, the Insurance Company has filed the present Civil Miscellaneous Appeals and the Civil Revision Petitions before this Court.

3.The learned counsel for the Insurance Company, even though, not questioned the quantum of compensation awarded by the Tribunal, submitted that the insurance policy for the lorry in question is only an 'Act Policy' as per which only three persons can travel in the goods vehicle and and there is no risk to cover unauthorised passengers and hence, the Insurance Company is not liable to pay any compensation to the claimants. The learned counsel further submitted that the claimants were travelling in the goods vehicle as gratuitous passengers, which is violation of the policy conditions and therefore, the Insurance company ought to have been exonerated from its liability to pay compensation.

4.Heard the learned counsel for the appellant and perused the materials available on record carefully and meticulously.

5.Despite the service of notice and the names of the respondents having been printed in the cause list, there is no representation on their behalf. However, due to efflux of time, this Court is inclined to proceed with the cases on merits.

6.There is no grievance as regards the factum of accident and the manner in which the accident occurred. What was disputed herein is the liability of the Insurance company to pay compensation to the claimants.

7.It is the specific contention of the learned counsel for the Insurance company that the policy in question is only an Act policy, which is meant to cover third party vehicle users and not the occupant of the vehicle. Contrary to the same, the claimants had travelled in the goods vehicle, which is in violation of the policy conditions. In such circumstances, the owner of the vehicle alone is liable to pay compensation and the insurance company cannot be mulcted with any liability.

8.It is well settled that if the policy is Act only Policy, the rider, the pillion rider in a two wheeler and the occupants of a four wheeler are not third parties as per Section 147 of the Motor Vehicles Act and they are not entitled to claim compensation from the Insurance Company. This Court has no quarrel with the said legal position.

9.In the present case, though the learned counsel for the insurance company contended that the insurance policy is only an Act

Policy and it does not cover the passengers of the vehicle and there is a limitation as to the use of the vehicle; and that, there was violation of policy conditions as the claimants travelled in the vehicle as gratuitous passengers, they have not adduced any concrete material either oral or documentary, to substantiate the same. In the absence of one such evidence, the Insurance company cannot be exonerated from its liability to pay compensation to the claimants, as rightly held by the Tribunal. Hence, the finding of the Tribunal with respect to liability of the Insurance company is hereby confirmed.

10.The Insurance Company has not disputed the quantum of compensation awarded by the Tribunal and hence, the same is confirmed as such.

11.In the result, all the Civil Miscellaneous Appeals and the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. The Insurance Company is directed to deposit the entire compensation amounts along with interest and costs, as ordered by the Tribunal, after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, all the claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal
Fast Track Court, Pudukkottai.

2.The Section Officer,
VR Section,Madurai Bench of Madras High Court, Madurai(2c)

C.M.A.(MD)Nos.353 & 357 of 2008
and
C.R.P.(NPD)(MD)Nos.433 & 434 of 2008
and
M.P.(MD)Nos.1 to 1 of 2008
23.11.2020

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