IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.12.2020

PRONOUNCED ON : 07.01.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.304, 590 of 2010 and 2392 of 2011

and M.P.Nos.1 & 1 of 2010 & 1 of 2011

(Through Video Conferencing)

United India Insurance Co., Ltd.,

No.38, Third Floor, Anna Salai,

Chennai 600 002. ... Appellant

in all C.M.As./2nd Respondent in MCOP.NOs.162/2005,185/2005 and 176/2005

vs.

K.Maha

.. 1st Respondentin

C.M.A.No.304 of 2010/ Petitioner in MCOP.NO.162/2005

S.Munusamy

.. 1st Respondent in

C.M.A.No.590 of 2010/ Petitioner in MCOP.NO.185/2005

Ramadoss

.. 1st Respondent in

C.M.A.No.2392 of 2011/Petitioner in MCOP.NO.176/2005

2.M.Radhakrishnan ... 2nd Respondent in all C.M.As./1st Respondent in all MCOPs do

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgments and Decrees passed by the Motor Accident Claims Tribunal,Ponneri in M.C.O.P.Nos.162/05, Dated 02.02.2009, MCOP.NO.185/2005 DATED 09.09.2009 by Motor Accident Claims Tribunal, Additional District Judge, Fast Track court No.4 Ponneri and MCOP.NO.176/2005 DATED 28.02.2011 by Motor Accident Claims Tribunal Sub Judge, Ponneri.

For Appellants	:	Mr. D.Baskaran (in all C.M.As.)
For R1	:	No Appearance (in all C.M.As.)
For R2	:	No Appearance (in C.M.A.590/2010)
For R2	:	Not Ready in Notice in CMA.No.304/2010 & 2392/2011

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

By this common Judgment, all the three Civil Miscellaneous Appeals are being disposed.

2. These appeals have been filed by the appellant insurance company against the separate judgments and decrees dated 02.02.2009, 09.09.2008 and 28.02.2011 passed by the Motor Accidents Claims Tribunal (Sub Court) Ponneri in M.C.O.P.Nos.162, 185 and 176 of 2005.

3. By the impugned separate judgments and decrees dated 02.02.2009, 09.09.2008 and 28.02.2011, the Tribunal has allowed the claim petitions filed by the 1st respondent/claimant in the respective appeal and has awarded a sum of Rs.63,000, 15,000 and 49,000 as compensation to them.

4. The case of the appellant-insurance company in these appeals are that admittedly the claimants who are the 1st respondent in the respective appeals travelled as authorised passengers. It is submitted that they neither travelled as representative of the owner of the goods nor as employees of the owner and since the policy did not contemplate to cover such risks, the Tribunal erred in awarding compensation to them.

5. It is further submitted that the policy covered only personal accident cover owner-cum-driver and third party. It is further submitted that the respective claimants who are the 1st respondent before this Court in the respective appeals were the labourers of the contractor of the Tamil Nadu Electricity Board who carried the transformer for E.B. and since seating capacity of the insured auto was only 1+1, there was no question of awarding compensation.

6. It is further submitted that as per F.I.R, totally five persons travelled in the insured mini goods carrier which was driven in a rash and negligent driving and therefore the Tribunal ought not have made the appellant-Insurance company liable to pay compensation. In this case, admittedly, the number of persons who travelled in the mini goods carrier were more than the authorised number of persons why could travel as per the Registration Certificate of the insured vehicle. However, that by itself will not mean that the respective claimants were unauthorised passengers. At best, it would mean that there was violation of the policy terms.

7. Therefore, there is no harm in directing by the appellant to pay and recover the amount from the owner of the insured vehicle as per the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224. Therefore, liberty can be given to the appellant Insurance Company to pay the compensation awarded by the Tribunal to the 1st respondent/claimant and recover the same from the

owner of the insured vehicle, i.e. 2nd respondent herein in the respective appeals.

8. Therefore, the appellant Insurance Company is directed to deposit the award amount in the respective appeals together with interest at 7.5% from the date of the claim petition till the date of deposit and cost, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

9. On such deposit, the 1st respondent/claimant in the respective appeals are entitled to withdraw the same together with interest, by filing suitable applications before the Tribunal.

10. The appellant-Insurance Company may proceed to recover the aforesaid amount of compensation from the 2nd respondent

owner of the vehicle as per the above decision of the Hon'ble Supreme Court.

11. In view of the above observation, these Civil Miscellaneous Appeals are disposed of. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd

To:
The Sub Judge,
Motor Accident Claims Tribunal
(Sub Court) Ponneri.

2.The Motor Accident Claims Tribunal,Ponneri.

3.The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track court No.4 Ponneri.

Copy to:
The Section Officer,
VR Section, High Court,Madras.

C.M.A.Nos.304, 590 of 2010 and 2392 of 2011

and M.P.Nos.1& 1 of 2010 & 1 of 2011

A.SK(13.09.2021)