IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1958 of 2013 and
456, 748, 2180 of 2014

Santhi .. Appellant in C.M.A.No.1958 of 2013

Sathya .. Appellant in C.M.A.No.456 of 2014

Ellammal .. Appellant in C.M.A.No.748 of 2014

1.Ellammal
2.Krishnaveni
3.Arumugam .. Appellants in C.M.A.No.2180 of 2014

Vs

1.J.Charles

2.The Manager,
National Insurance Co. Ltd.,
No.751, Anna Salai,
III rd floor,
Chennai 600 002.

3.Muthu .....Respondents in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.11.2009 made in M.C.O.P.Nos.5139, 5138, 5136 & 5140 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.II), Chennai.

In all C.M.As.
For Appellant : Mr.Amar D Pandiya

In C.M.A.Nos.1958 of 2013, 456 and 748 of 2014
For Respondents : Mr.M.Krishnamoorthy for R2
R1 - No appearance
R3 - Died

In C.M.A.No.2180 of 2014

For Respondents : Mr.S.Vadivel for R2
R1 - No appearance
R3 - Died

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellants/claimants against the common award dated 26.11.2009 made in M.C.O.P.Nos.5139, 5138, 5136 & 5140 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Court (Fast Track Court No.II), Chennai.

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

3.The appellants in all the appeals are claimants in M.C.O.P. Nos. 5139, 5138, 5136 & 5140 of 2003, on the file of the Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.II), Chennai. The appellants in C.M.A.Nos.1958 of 2013 & 456 and 748 of 2014 filed the said claim petitions claiming a sum of Rs.50,000/- each as compensation for the injuries sustained by them in the accident that took place on 05.01.2003. The appellants/legal heirs of the deceased Dhanapal in C.M.A.No.2180 of 2014 filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the death of one Dhanapal who died in the same accident.

4.According to the appellants, on 05.01.2003 at about 04.00 a.m., while the appellants and deceased Dhanapal were travelling in a auto from Puliyanthoppu to Koyambedu, the driver of the auto drove the same in a rash and negligent manner. Due to which, the auto toppled. In the accident, the appellants and 2 others sustained injuries and one Dhanapal died. According to the appellants, the accident occurred due to rash and negligent driving by the driver of the auto beloning to the respondents 1 and 3 and insured with the 2nd respondent. The appellants and legal heirs of the deceased Dhanapal claimed compensation depending upon the age, occupation and income of the injured/deceased against the respondents.

5.The respondents 1 and 3, who are the owners of the auto remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company filed counter statement, denying all the averments made in the claim petitions and stated that the 2nd respondent is not liable to pay compensation as driver of the auto did not possess badge endorsement to drive the transport vehicle. The 2nd respondent further stated that permitted capacity of the auto is 3 passengers + 1 driver. At the time of accident, 9 persons traveled in the auto. The 1st respondent committed breach of policy conditions by entrusting the auto to the person, who did not possess valid driving license to drive passengers vehicle and permitted him to carry more number of persons than permitted capacity and thereby violated statutory and policy conditions. Originally, the appellants contended that the 1st respondent is owner of the auto. Subsequently, they impleaded 3rd respondent as owner of the auto as he purchased the auto from the 1st respondent. The Registration Certificate of the auto is in the name of the 1st respondent and Insurance Policy is in the name of the 3rd respondent and prayed for dismissal of all the three claim petitions.

7.Before the Tribunal, wife of the deceased Dhanapal was examined as P.W.1, appellants in C.M.A.Nos.1958 of 2013 and 456 & 748 of 2014 were examined as P.W.2 to P.W.4, Dr.Thiyagarajan was examined as P.W.5 and marked 16 documents as Exs.P1 to P16. The 2nd respondent/Insurance Company examined 3 witnesses as R.W.1 to R.W.3 and marked 3 documents as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidences held that the accident occurred only due to rash and negligent driving by the driver of the auto. The Tribunal considering the fact that the driver of the auto did not possess badge endorsement to drive the transport vehicle and carried more than permitted capacity and committed violation of policy conditions, directed the respondents 1 and 3, owners of the auto to jointly and severally pay a sum of Rs.7,500/-, Rs.35,000/- , Rs.5,000/- and Rs.2,12,000/- respectively as compensation to the appellants and dismissed the claim petitions as against the 2nd respondent/Insurance Company.

9.Challenging the portion of award dismissing the claim petitions against the 2nd respondent/Insurance Company and for enhancement of compensation, the present appeals have been filed by the appellants.

10.The learned counsel appearing for the appellants contended that the appellants are third parties, the 2nd respondent is liable to pay compensation as the policy was in force at the time of accident. The Tribunal erred in dismissing the claim petitions as against the 2nd respondent/Insurance

Company from its liability on the ground that the driver of the auto did not possess badge endorsement to drive the transport vehicle. The Tribunal ought to have ordered pay and recovery and prayed for a direction to the 2nd respondent/Insurance Company to pay compensation. The Tribunal erred in awarding only meagre amounts as compensation to the appellants without considering the age, occupation and nature of injuries sustained by the appellants as well as the deceased and prayed for enhancement of compensation.

11.The 2nd respondent/Insurance Company contended that at the time of accident, more number of persons than permitted capacity traveled in the auto. The permitted capacity is 3+1 and at the time of accident, 9 persons have traveled in the auto. Hence, the owner of the auto has violated permit and policy conditions. The Tribunal considering the judgment of the Hon'ble Apex Court and this Court, rightly dismissed the claim petitions as against the 2nd respondent/Insurance Company. In any event, the 2nd respondent/Insurance Company is liable only to the risk of three persons to whom the Insurance Policy was issued. In support of his contention, he relied on the judgments of the Hon'ble Apex Court as well as the Division Bench of this Court reported in 2004 ACJ 140[M.Anandavalliamma and others Vs. Aravind Eye Hospital and another] and 2007 (2) TNMAC 202 [Thirumalainayagam and another Vs. Dheeran Chinnamalai Transportation] and submitted that carrying more number of persons is also a reason for the accident. In the present case, the owner of the auto has carried more passengers than the permitted capacity and hence, he is only responsible for the accident. Hence, the 2nd respondent/Insurance Company is not liable to pay compensation. The total compensations awarded by the Tribunal are not meagre and the appellants have not made out any case for enhancement of compensations and prayed for dismissal of the appeals.

12.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

13.Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials available on record.

14.The claim petitions are filed by the appellants, claiming compensation for the injuries and death of Dhanapal against the respondents. The Tribunal dismissed the claim petitions as against the 2nd respondent/Insurance Company on two grounds viz., the driver of the auto did not possess badge endorsement to drive the transport vehicle and at the time of accident, 9 persons have traveled in the auto which is more than the permitted capacity of 3 passengers + 1 driver. In the two judgments relied on by the learned counsel for the 2nd respondent, the Hon'ble Apex Court as well as this Court has held that when more number of persons than permitted capacity of persons travelled in a vehicle, the Insurance Company is liable to pay compensation only with regard to the permitted number of persons and Insurance Company cannot be exonerated from their liability. In the present case, at the time of accident, 9 persons have traveled and claimed compensation. As per the above two judgments, the Insurance Company is liable to pay highest three compensations awarded by the Tribunal and the same has to be disbursed proportionately to all the appellants. In view of the judgments of the Hon'ble Apex Court as well as the Division Bench of this Court cited supra, the award of the Tribunal is modified directing the 2nd respondent/Insurance Company to deposit highest three compensations viz., Rs.2,12,000/-, Rs.35,000/- and Rs.7,500/- to the credit of claim petitions. The appellants are entitled to recover the balance amount viz., Rs.5,000/- (M.C.O.P.No.5136 of 2003) from the owners of the vehicle viz., respondents 1 and 3. On such deposit, the Tribunal is directed to disburse the same to all the appellants in proportionate to the compensation awarded to them.

15.As far as possessing badge endorsement is concerned, the said reasoning of the Tribunal is no longer available to the Insurance Company. This issue was decided by the Hon'ble Apex Court in the judgment reported in 2017 (4) SCC 663 (Mukund Dewangan vs. Oriental Insurance Company Ltd.), wherein the Hon'ble Apex Court has held that if a person holds a license to drive a particular class of vehicle with specified weight of the vehicle, he can drive all the vehicles in that particular class including transport vehicle. The badge endorsement is not necessary to drive the transport vehicle, if a person possess valid driving license to drive that particular class of vehicle. In the present case, the driver of the auto possessed driving license to drive light motor vehicle but he did not obtain badge to drive transport vehicle. As per the judgment of the Hon'ble Apex Court referred to above, not obtaining and possessing badge endorsement will not make the driving license possessed by the driver invalid to drive the transport vehicle in the particular class for which the persons have obtained license. In view of the judgment of the Hon'ble Apex Court referred to above, the Insurance Company is liable to pay compensation awarded by the Tribunal.

16.In the result, this Civil Miscellaneous Appeals are partly allowed and the 2nd respondent/Insurance Company is directed to deposit highest three compensations viz., Rs.2,12,000/-, Rs.35,000/- and Rs.7,500/- together with interest at the rate of 7.5% per annum from the date of filing of the appeal i.e., 27.02.2014, till the date of deposit, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. The owners/respondents 1 and 3 are directed to deposit the balance compensation amount viz., Rs.5,000/- (M.C.O.P.No.5136 of 2003) together with interest at the rate of 7.5% per annum from the date of filing of the appeal i.e., 27.02.2014, till the date of deposit, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.5136 of 2003. On such deposit, the Tribunal is directed to disburse the same to all the appellants in proportionate to the compensation awarded to them. The appellants in C.M.A.Nos.1958 of 2013 and 456 & 748 of 2014, are permitted to withdraw the award amount, along with interest and costs, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellants in C.M.A.No.2180 of 2014 are permitted to withdraw their share of the award amount, along with proportionate interest and costs, as per the apportionment fixed by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The respondents 1 and 3, owners of the auto are permitted to withdraw the award amount, lying in the deposit to the credit of M.A.C.T.O.P.Nos.5139, 5138 and 5140 of 2003, if the entire award amount has already been deposited by them. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

vkr

To

1.The Motor Accident Claims Tribunal,
Additional District Court,
Fast Track Court No.II,
Chennai.

Copy to:

The Section Officer,
VR Section, High Court,
Madras.

+4cc to Mr.M.Selvam, Advocate SR.No.63643, 63644, 63645, 63646
+1cc to Mr.S.Vadivel, Advocate SR.No.63331

C.M.A.Nos.1958 of 2013 and
456, 748, 2180 of 2014

VBM(CO)
CB(09/03/2022)