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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.2888, 2889, 2890, 2891,
2893, 2894 & 2895 of 2015
and
MP Nos.1,1,1,1,1,1 and 1 of 2015

In CMA No.2888 of 2015

Branch Manager,
United India Insurance Company Ltd.,
G.P.M. Street, Ambapuram,
Gudiyatham.

...Appellant in all the CMAs/
2nd Respondent in all MCOP

versus

Minor. Arunkumar,
S/o.Babu
rep by next friend, natural guardian
mother Savithri.

.. 1st Respondent/Petitioner in
CMA.No.2888/2015

Santhi
W/o.Raja

...

1st Respondent/Petitioner in
CMA.No.2889/2015

Karunakaran

...

1st Respondent/Petitioner in
CMA.No.2890/15

Kalyani

...

1st Respondent/Petitioner in
CMA.No.2891/2015

Sagunthala

...

1st Respondent/Petitioner in
CMA.No.2893/2015

Palaniraja

...

1st Respondent/Petitioner in
CMA.No.2894/2015

1.Govindaraj
2.Kokila
3.Elangovan
4.Elavarasan

...

Respondents/Petitioners 1 to 4 in
CMA.No.2895/2015



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Sambath Prabhakaran

Vs.

.. 2nd Respondent/1st Respondent
in CMA.2888 to 2891 and 2893 to 2894/15
5th respondent/1st respondent in
CMA.No.2895/2015

Prayer in CMA No.2888 to 2891, 2893 to 2895 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 10.07.2014 made in OP No.86, 31, 32, 35, 84, 85 and 106 of 2009 on the file of the Motor Accidents Claims Tribunal (Sub Court), Gudiyatham, Vellore District.

For Appellant in all CMAs : Mr.D. Bhaskaran

For 1st Respondents in all CMAs

For Respondents 1 to 4 in : Mr.T.Dhanyakumar
CMA.2895/2015

Respondents 2 in CMA.2888 to 2891

and 2893 to 2894/15 and

Respondents 5 in CMA.No.2895/2015 : No Appearance

COMMON JUDGMENT
(Heard video conference)

These appeals have been filed by the Insurance Company challenging the common award passed by Motor Accidents Claims Tribunal, Sub-court Gudiyatham, Vellore district in M.C.O.P Nos. 31, 32, 35, 84, 85, 86 and 106 of 2009.

2. Heard Mr.D. Bhaskaran, learned counsel for the appellant / Insurance Company and Mr.T.Dhanyakumar, learned counsel for the 1st respondent in all CMAs.

3. This Court has perused and examined the impugned common award passed by the Tribunal.

4. The Appellant / Insurance Company has challenged the impugned common award on the ground that the accident victims were all gratuitous passengers in the insured goods vehicle and therefore, they are not liable to pay the compensation.

5. Therefore, according to the Appellant / Insurance Company, the Tribunal has erroneously granted pay and recovery



rights against the Appellant Insurance Company in favour of the respondents / claimants.

6. Admittedly, as seen from the respective claim petitions filed in the aforesaid M.C.O.P.s, the accident victims were all travelling in the insured van bearing Registration No. TN-39-H-5789 when the accident happened on 15.08.2008.

7. Admittedly, as per the Insurance Policy which has been marked as Ex.R1 before the Tribunal, the van can carry only three persons in the cabin including the driver and they must all be employees of the owner (insured). In the case on hand, all the accident victims were all travelling in the place meant for storing the goods and not in the cabin. Admittedly, as seen from the deposition of the witnesses on the side of the claimants and as per the FIR which has been marked as Ex.P1, before the Tribunal, it is clear that all the accident victims were travelling in the insured van, only for the purpose of attending a Temple festival. In their respective claim petitions also, there is no pleading that they were employees of the owner of the vehicle(insured). The Tribunal has also given a finding under the impugned common award that all the accident victims were gratuitous passengers, but erroneously by total non application of mind to the settled law has directed the Appellant Insurance Company to pay the determined compensation and recover the same from the insured(owner), thereafter.

8. The liability under Section 147 of the Motor Vehicles Act will arise only when the claimant satisfies the conditions stipulated therein.

9. In the case on hand, when the evidence available on record categorically will lead to the conclusion that the accident victims are gratuitous passengers, the question of liability of the Appellant Insurance Company under Section 147 of Motor Vehicles Act will not arise and the question of pay and recovery will also not arise.

10. Since, the Appellant / Insurance Company is not liable to compensate the claimants, as the accident victims are all gratuitous passengers, this Court is of the considered view that the following decisions relied upon by the learned counsel for the Appellant / Insurance Company squarely supports the case of the Appellant / Insurance Company as it is the settled law on the issue on hand.

a) Judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Co. Ltd., Versus Sudhakaran K.V. & Ors



reported in 2008 SCC Online SC 931.

b) Judgment of this Court, dated 10.09.2020 in the case of United India Insurance Company Ltd., versus Selvi and others

10. For the foregoing reasons, the common award dated 10.07.2014 passed by Motor Accident Claims Tribunal, (Sub Court), Gudiyatham, Vellore District in M.C.O.P Nos.31, 32, 35, 84, 85, 86 and 106 of 2009 are hereby set aside and these Civil Miscellaneous Appeals are allowed. However, insofar as the award passed against the owner of the vehicle is concerned, the same is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

11. It is made clear that the appellant / Insurance Company is permitted to withdraw the amount, if any deposited by them before the Tribunal, after the passing of the impugned award by filing an appropriate application.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

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To

1. The Sub Judge,
Motor Accident Claims Tribunal,
Gudiyatham,
Vellore District.
2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

CMA Nos.2888, 2889, 2890,2891,
2893, 2894 & 2895 of 2015

RSI (CO)
CB(07/12/2021)