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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.158 to 161 of 2014
and M.P.Nos.1, 1, 1 & 1 of 2014

The New India Assurance Co. Ltd.,
Salem

...Appellant in all CMAs./R2

Vs

Chinnasamy ...1st Respondent in C.M.A.No.158 of 2014/Petitioner

Chinnakannu ...1st Respondent in C.M.A.No.159 of 2014

Periyasamy ...1st Respondent in C.M.A.No.160 of 2014

Rajamanickam ... 1st Respondent in C.M.A.No.161 of 2014

K.Senthilkumar ... 2nd Respondent in all CMAs/R1

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2013 made in M.C.O.P.Nos.244, 245, 247 & 248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Kallakurichi.

In all CMAs.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.A.A.Venkatesan for R1
No appearance for R2

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

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the common award dated 27.06.2013 made in M.C.O.P.Nos.244, 245, 247 & 248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Kallakurichi.



2.All the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant/Insurance Company is 2nd respondent in M.C.O.P.Nos.244, 245, 247 & 248 of 2011 on the file of the Motor Accident Claims Tribunal, III Additional District cum Sessions Court, Kallakurichi. The claimants in M.C.O.P.Nos.244, 245, 247 & 248 of 2011 filed the said claim petitions claiming a sum of Rs.10,00,000/-, Rs.15,00,000/-, Rs.3,00,000/- and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 14.07.2008.

4.According to the claimants, on the date of accident i.e., on 14.07.2008, at about 12.30 hours, while the injured claimants were travelling in a mini door vehicle belonging to the 1st respondent to attend the marriage in a temple at Risivanthiyam, the driver of the mini door vehicle drove the same in a rash and negligent manner, due to which the vehicle overturned and thus the accident occurred. In the accident, all the claimants suffered injuries. The accident occurred only due to rash and negligent driving by the driver of the vehicle and hence, they filed the above claim petitions seeking compensation.

5.The 1st respondent filed counter statement denying the averments made in the claim petitions and submitted that the accident occurred only due to the negligence of the claimants. In any event, the vehicle is insured with the 2nd respondent and the compensation if any is liable to be payable by the 2nd respondent, as insurer of the vehicle and prayed for dismissal of claim petition as against the 1st respondent.

6.The 2nd respondent/Insurance Company filed counter statement and contended that the claimants travelled as unauthorized passengers in the mini door vehicle, to attend a marriage, which is in violation of policy condition. Hence, the 2nd respondent is not liable to pay any compensation to the claimants. The 2nd respondent also made various averments including compensation claimed by the claimants.

7.Before the Tribunal, claimants examined themselves as P.W.1 to P.W.4, Dr.Navukarasu was examined as P.W.5 and marked 22 documents as Exs.P1 to P22. The 2nd respondent/Insurance



Company examined one Kumar, Official of Insurance Company as R.W.1 and marked Insurance Policy as Ex.R1.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the goods vehicle belonging to the 1st respondent insured with the 2nd respondent/Insurance Company. As far as liability is concerned, the Tribunal considering the Judgment of the Hon'ble Apex Court reported in 2004 ACJ 428 (SC) [National Insurance Company Ltd., Vs. Baljit Kaur and others] relied on by the counsel for the 2nd respondent/Insurance Company, ordered pay and recovery directing the 2nd respondent/ Insurance Company to pay a sum of Rs.80,000/-, Rs.80,700/-, Rs.60,000/- and Rs.70,000/- as compensation to the claimants respectively, at the first instance and recover the same from the 1st respondent.

9.Against the common award dated 27.06.2013 made in M.C.O.P.Nos.244, 245, 247 & 248 of 2011, questioning the liability fastened on the 2nd respondent/Insurance Company, the present appeals have been filed.

10.The learned counsel appearing for the 2nd respondent/Insurance Company contended that all the claimants traveled in the mini door vehicle to attend the marriage, which is a goods vehicle. The accident occurred while they were returning from the marriage. In the mini door vehicle, only goods can be transported and no passengers can travel. The claimants traveled as unauthorized passengers to attend the marriage. Hence, the 2nd respondent is not liable to pay compensation and prayed for setting aside the award of the Tribunal. In support of his contention, the learned counsel relied on the judgment of the Division Bench of this Court reported in (2018) 2 TNMAC 731 (DB) [Bharati AXA General Insurance Co. Ltd., Vs. Aandi and others].

11.Per contra, the learned counsel appearing for the claimants contended that the 1st respondent, owner of the vehicle paid premium for two passengers and 2nd respondent issued cover note dated 30.07.2007. In the cover note, it is not mentioned that the 2nd respondent/Insurance Company is liable to pay for the risk of two passengers, who traveled in the insured vehicle. The learned counsel further contended that the Motor Vehicle's Act is beneficial legislation and the claimants must enjoy the fruits of the award. If the award is passed only against the 1st respondent /owner of the vehicle, the claimants will not be in a position to realise the amount from the 1st respondent. The



Tribunal considering the judgment of the Hon'ble Apex Court reported in 2004 ACJ 428 (SC) [National Insurance Company Ltd., Vs. Baljit Kaur and others], ordered pay and recovery and prayed for dismissal of the appeals.

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12.The learned counsel appearing for the 2nd respondent/ Insurance Company in reply submitted that the 2nd respondent issued policy for the period from 30.07.2007 to 29.07.2008. As per the policy, the liability of the 2nd respondent / Insurance Company is only with regard to the owner-cum-driver, 2 workers and the policy issued by the 2nd respondent does not cover the risk of any passengers. The cover note relied on by the learned counsel for the claimants was not issued by the 2nd respondent/Insurance Company and the same was not marked before the Tribunal. The claimants cannot rely on the cover note and prayed for allowing all the appeals.

13.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.

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

15.From the materials available on record, it is seen that all the claimants traveled in the mini door vehicle, which is a goods vehicle. In the goods vehicle, no passenger can travel. Anybody travelling in the goods vehicle would be termed only an unauthorized passengers. The owner of the vehicle, in violation of policy condition, permitted persons to travel unauthorizedly in the vehicle. Whether Insurance Company is liable to pay compensation for unauthorized passengers or pay and recovery can be ordered is no longer resintegra. It has been held by the Hon'ble Apex Court as well as this Court that the Insurance Company is not liable to pay compensation to the risk of unauthorized passengers traveling in the goods vehicle. The Court has no power to order pay and recovery also when the Insurance Company is not liable to pay any amount as compensation to the claimants. In the judgment relied on by the learned counsel for the 2nd respondent/Insurance Company, the Division Bench of this Court has held that the Insurance Company is not liable to pay compensation to the unauthorized passengers. The learned counsel appearing for the claimants produced copy of the cover note dated 30.07.2007 and contended that as per the cover note, the risk of two passengers traveling



in the vehicle is covered. On the other hand, the learned counsel appearing for the 2nd respondent/ Insurance Company contended that the cover note is not issued by the 2nd respondent/Insurance Company and the same was not produced before the Tribunal and it cannot be acted upon. The said contention of the learned counsel appearing for the 2nd respondent/Insurance Company has considerable force and it is acceptable. The 2nd respondent has produced copy of the policy issued to the 1st respondent, which was marked as Ex.R1. The claimants have not disputed and objected for marking policy as Ex.R1. In Ex.R1, it is seen that the policy was issued to cover 3rd party risk and owner-cum-driver, Workmen employee 3, Non fair paying passenger No.1 only. There is no mention about covering the risk of two passengers in the policy marked as Ex.R1. The learned counsel appearing for the claimants has not explained as to why the cover note now produced before this Court was not produced before the Tribunal, giving an opportunity to the 2nd respondent to challenge the same. In view of the failure on the part of the claimants to produce the copy of the cover note before the Tribunal, the same cannot be accepted and relied on before this Court. The Tribunal without considering the settled position of law, earlier judgment of the Hon'ble Apex Court and this Court, ordered pay and recovery, which is liable to be set aside and it is hereby set aside. A portion of the common award of the Tribunal directing the 2nd respondent/Insurance Company to pay compensation at the first instance and recover the same from the 1st respondent/owner of the vehicle alone is set aside. The compensation awarded by the Tribunal is payable only by 1st respondent, owner of the vehicle.

16. In the result, this Civil Miscellaneous Appeals are allowed and the amount awarded by the Tribunal at Rs.80,000/-, Rs.80,700/-, Rs.60,000/- and Rs.70,000/- respectively, together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 1st respondent, owner of the vehicle is directed to deposit a sum of Rs.80,000/-, Rs.80,700/-, Rs.60,000/- and Rs.70,000/- respectively 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.A.C.T.O.P.Nos. 244, 245, 247 & 248 of 2011. On such deposit, the claimants in all the appeals 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 2nd respondent-Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.A.C.T.O.P.Nos. 244, 245, 247 & 248 of



2011, if the entire award amount has already been deposited. It is made clear that if the claimants in all the appeals have already withdrawn the award amount, the 2nd respondent/Insurance Company is not entitled to recover the same from the claimants. It is open to the 2nd respondent/Insurance Company to recover the same from the 1st respondent, owner of the vehicle. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vkr

To

1.The Motor Accident Claims Tribunal
III Additional District cum Sessions Judge,
Kallakurichi.

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

+1 CC to Mr.A.A.Venkatesan, Advocate sr 63059.

C.M.A.Nos.158 to 161 of 2014
and M.P.Nos.1, 1, 1 & 1 of 2014

VBM(CO)
SP(24/01/2022)