



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2021

Delivered on : 18.03.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1078 to 1081 of 2017

and

C.M.P.Nos.5373 & 5374 of 2017

CMA.No.1078 of 2017

1.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

2.United India Insurance Company Limited,
No.28, III Floor,
Mailam Road,
Tindivanam.

... Appellants/Respondent 2 & 4

Vs

1.N.Sangeetha
2.A.Sakthi

...1st Respondent/Petitioner

3.M/s.Ram Silks
No.184, Jawaharlal Street,
Pondicherry.

... Respondents/Respondents 1 & 3

CMA.No.1079 of 2017

1.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

2.United India Insurance Company Limited,
No.28, III Floor,
Mailam Road,
Tindivanam.

... Appellants/Respondents 2 & 4

Vs

1.Vaiyapuri
2.Jagajothi
3.Pandiraj
4.A.Sakthi

...1 to 3 Respondents/Petitioners



5.M/s.Ram Silks
No.184, Jawaharlal Street,
Pondicherry.

...4th and 5th Respondents/
Respondents 1 & 3

WEB COPY

CMA.No.1080 of 2017

1.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

2.United India Insurance Company Limited,
No.28, III Floor,
Mailam Road,
Tindivanam.

... Appellants/Respondents 2 & 4

Vs

1.R.Murugan

2.R.Sumathi

...1 & 2nd Respondent/Petitioner

3.A.Sakthi

4.M/s.Ram Silks

No.184, Jawaharlal Street,
Pondicherry.

...3 & 4 Respondents/Respondents 1 & 3

CMA.No.1081 of 2017:

1.United India Insurance Company Limited,
No.38, Anna Salai,
Chennai - 600 002.

2.United India Insurance Company Limited,
No.28, III Floor,
Mailam Road,
Tindivanam.

... Appellants/Respondents 2 & 4

Vs

1.G.Gnanavel

...1st Respondent/Petitioner

2.A.Sakthi

3.M/s.Ram Silks

No.184, Jawaharlal Street,
Pondicherry.

...2nd and 3rd Respondents/
Respondents 1 & 3

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.03.2012 made in M.C.O.P.Nos.4541, 4542, 4543 & 4544 of



WEB COPY

2000 respectively, on the file of the Motor Accidents Claims Tribunal, (III Judge, Court of Small Causes) at Chennai.

For Appellants : M/s.R.Sree Vidya
(in all CMAs)

For Respondents : Mr.Kishorekumar for
Mr.N.S.Sivakumar for R1 in
C.M.A.Nos.1078, 1081/2017

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

(The cases have been heard through Video Conferencing)

These four appeals are preferred by the Insurance Company against the common judgment passed by the Tribunal in four different claim petitions. Since the facts and point involved in these appeals are one and the same, all the four appeals are disposed of by a common judgment.

2. On 29.06.1998, at about 06.30 a.m., a Mini Lorry bearing Registration No.TN 09 Z 1389 carrying 40 persons while proceeding from South to North at the junction of Thirumangalam 100 feet road and Ambattur Estate Junction, collided with an Ambassador Car bearing Registration No.PY 01 8589, which was coming from West to East, as a result, the lorry capsized, two of the passengers in the lorry died and two sustained grievous injury. The legal representatives of the deceased accident victims and the injured accident victims filed claim petitions.

3. The details of the claim petitions are as below:

i) O.P.No.4541 of 2000 filed by Sangeetha claiming Rs.1,00,000/- for fractured injury, abrasion-left nostril, contusion over chin, abrasion over forehead.

ii) O.P.No.4542 of 2000 filed by Vaiyapuri, Jagajoth, Pandiraj, the legal representatives of the deceased Selvarani claiming Rs.3,00,000/-.

iii) O.P.No.4543 of 2000 filed by Murugan and Sumathi, legal representatives of the deceased Vijaya claiming compensation of Rs.3,00,000/-.

iv) O.P.No.4544 of 2000 filed by Gnanavel claiming a sum of Rs.1,00,000/- for fracture of left wrist Radius, abrasion on the right side of forehead, left wrist and right knee.

4. Both the Mini Lorry and Ambassador Car were insured under the same Insurance Company viz., United India Insurance. In the counter, the Insurance Company contended that the F.I.R is registered against the lorry driver, who had violated the traffic Rules. He jumped the signal and caused the accident.



WEB COPY

He had no valid driving license. By loading 40 unauthorised passengers in a goods vehicle, there is a grave violation of the Insurance policy and therefore, the Insurance Company is not liable to indemnify the lorry owner who is liable to pay the compensation.

5. The Tribunal, on considering the evidence on either side held that F.I.R. is registered against the lorry driver for his rash and negligent driving. The eyewitnesses had deposed that accident caused due to negligence of both the drivers. Therefore, apportioned the negligence of the drivers in the ratio of 75:25 between the lorry driver and the car driver.

6. The deceased Selvarani and Vijaya and the injured persons viz., Sangeetha and Gnanavel were construction workers. They were travelling in the Mini Lorry bearing Registration No. TN 09 Z 1389, along with the construction tools and building materials. Therefore, the Tribunal held that the Insurance Company is liable to pay the compensation to the extent of 75% being the insurer of the Lorry and liable to pay 25% in respect of the Car. For the injured claimants, the Tribunal awarded Rs.30,000/- each and for the legal representatives of the deceased Selvarani, the claimants in O.P.No.4542 of 2000, the Tribunal awarded a sum of Rs.2,73,200/- and for the legal representatives of the deceased Vijaya, the claimants in O.P.No.4543 of 2000, the Tribunal awarded a sum of Rs.2,68,200/-.

7. The appeal is filed by the Insurance Company on the ground that as far as the liability to pay 75% for the negligence of the lorry driver, who had no valid driving license and having violated the Motor Vehicles Rules by carrying unauthorised passenger in goods vehicle, the Insurance Company has to be absolved from its liability.

8. Learned counsel appearing for the respondents submitted that the lorry driver had LMV license. The endorsement is not required as per the judgment of the Supreme Court in Mukund Dewangan case. Therefore, the award of the Tribunal has to be confirmed.

9. Per contra, the learned counsel appearing for the appellant relying upon the decision of the Division Bench of this Court rendered in Bharathi Axa General Insurance Company Limited vs Aandi and others reported in 2019 ACJ 1975, contended that unauthorised passenger in a goods vehicle are not entitled for being indemnified in view of statutory violation. Having proved that the claimants are unauthorised passenger in goods vehicle, the question of Insurance Company paying compensation does not arise. Though it is contended that the injured were



construction labourers travelling along with construction tools, driving a goods vehicle with unauthorised passenger and without valid driving license is a gross violation of the Rules. Therefore, following the above judgment of the Division Bench, the award of the Tribunal is liable to be modified insofar as the liability fixed on the Insurance Company to pay 75% of the award amount on behalf of the Mini Lorry owner, who is the first respondent in the claim petitions.

10.The short point involved in these four appeals is as to whether the Insurance Company liable to indemnify the vehicle owner, who has grossly violated the Motor Vehicle Rules by carrying unauthorised passenger in the goods vehicle.

11.The Mini Lorry, which was involved in the accident is LMV goods vehicle. The registered unladen weight is 5,950 Kg. It was insured under the appellant Company with coverage valid from 28.05.1998 to 19.05.1999. The accident occurred on 29.06.1998, when the vehicle had insurance coverage. In the accident, more than 20 persons injured and two of them died. There is evidence to show that 40 persons were travelling at that point of time. Undoubtedly, passengers who were travelling in the goods vehicle more and above the seating capacity are unauthorised passengers.

12.The respondent had marked the driving license of the lorry driver, Veeramani. He possessed LMV vehicle since 16.07.1996, which is valid upto 15.07.2016. No doubt, there is no endorsement to drive goods vehicle but however in Mukund Dewangan case reported in (2017) 14 SCC 663, the Supreme Court has held that possession of LMV license sufficient to drive medium goods vehicle. The courts have held that when a driver is holding a license to drive Light Motor Vehicle, he is competent to drive transport vehicle without specific endorsement.

13.From the facts of the case, this Court finds that the violation is carrying unauthorised passenger more than the seating capacity. No doubt, it is a grave violation and in the normal course, following the Division Bench judgment of this Court rendered in Bharathi Axa General Insurance Company Limited vs. Aandi and others (cited supra), the Insurance Company has to be exonerated from indemnifying the lorry owner paying 75% of compensation.

14.However, in the instant case, taking note of fact that the accident took place in the year 1998, the matter been pending for all these years, at this point of time after 23 years exonerating the Insurance Company absolving from its liability will cause great difficulty to the claimants to



recover 75% of the compensation from the owner of the lorry. Therefore, the award of the Tribunal is modified to the effect that the appellant Insurance Company shall pay the compensation, as ordered by the Tribunal with liberty to recover 75% of the award amount paid on behalf of the lorry owner, Sakthi. The said amount shall be recovered from the lorry owner following the principle of Nanjappan case reported in 2004(1) TNMAC 211 (SC).

15. Accordingly, the Civil Miscellaneous Appeals are party allowed. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri
To

The III Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes,
Chennai.

+4cc to M/s.N.S.Sivakumar, Advocate Sr.17913,17914, 17915, 17916
+1cc to Mr.R.Ravichandran, Advocate Sr.18359

C.M.A.Nos.1078 to 1081 of 2017
and
C.M.P.Nos.5373 & 5374 of 2017

sra[co]
srg 01/11/2021