IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :04.01.2021

Pronounced on :06.01.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.Nos.119 to 122 of 2017
and
C.M.P.Nos.891 to 894 of 2017

The Branch Manager,
M/s New India Assurance Co. Ltd.,
D.M.Elakka & Tk,
Nagapattinam Town & District.
.. Appellant/2nd Respondent in all the appeals

/versus/

1.Mrs.Dhanapakkiyam

2.Mr.Vijayakumar (owner) .. Respondents in C.M.A.No.119 of 2017

1.Tmt.Ramadevi

2.Mr.Vijayakuamr (owner) .. Respondents in C.M.A.No.120 of 2017

1.Tmt.Palaniyammal

2.Mr.Vijayakumar (owner) .. Respondents in C.M.A.No.121 of 2017

1.Tmt.Janaki

2.Mr.Vijayakumar (owner) .. Respondents in C.M.A.No.122 of 2017

Prayer in C.M.A.No.119 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.21 of 2015 on 28.08.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate-MACT) at Nagapattinam District.

Prayer in C.M.A.No.120 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.29 of 2015 on 28.08.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate-MACT) at Nagapattinam District.

Prayer in C.M.A.No.121 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.31 of 2015 on 28.08.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate-MACT) at Nagapattinam District.

Prayer in C.M.A.No.122 of 2017: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P.No.33 of 2015 on 28.08.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate-MACT) at Nagapattinam District.

For Appellant :Mr.J.Chandran(in all the appeals)

For Respondents :Not ready notice for R1 & R2
(in all the appeals)

COMMON JUDGMENT

(The case has been heard through video conference)

The batch of four appeals arising out of a common judgment passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Nagapattinam.

2.Four claim petitions were filed before the Tribunal in respect of an accident occurred on 29.03.2014, while the claim petitioners were travelling in an Auto bearing Reg.No.TN-51-C-1431 from Nagapattinam to Velankanni for purchase of fishes, dashed behind the lorry bearing Reg.No.TN-28-K-2040 near Veerankudikadu bus stop.

3.The common facts involved in these cases is that on the date of the accident, (1)Tmt.Dhanapakkiyam the petitioner in M.C.O.P.No.21 of 2015(C.M.A.No.119 of 2017); (2)Tmt.Ramadevi the petitioner in M.C.O.P.No.29 of 2015(C.M.A.No.120 of 2017); (3) Tmt.Palaniyammal the petitioner in M.C.O.P.No.31 of 2015 (C.M.A.No.121 of 2015); and (4)Tmt.Janaki the petitioner in M.C.O.P.No.33 of 2015 (C.M.A.No.122 of 2017) all are fish vendors and have gone together in the Auto from their Village to Nagapattinam for purchasing fish. On the way, near

Veerankudikadu bus stop, the Auto, in which they were travelling, dashed behind the lorry in which all the four claimants sustained severe injury and they were taken to Nagapattinam Government Hospital and admitted as inpatient and given treatment.

4.The accident occurred due to the rash and negligent driving of the auto driver. Hence, holding the owner of the auto and the Insurance Company liable for the injury sustained and loss of income, the claimants have made the following claim:-

1.Dhanapakkiyam in M.C.O.P.No.21 of 2015 had claimed Rs.50,000/- as compensation.
2.Ramadevi in M.C.O.P.No.29 of 2015 had claimed Rs.50,000/- as compensation.
3.Palaniyammal in M.C.O.P.No.31 of 2015 had claimed Rs.1,00,000/- as compensation.
4.Janaki in M.C.O.P.No.33 of 2015 had claimed Rs.1,00,000/- as compensation.

5.The respondent/Insurance Company filed a common counter wherein they contested the claim on the ground that the Auto driver had no valid driving licence and seven persons were travelling in the load Auto against the permit and policy condition. Therefore, the Insurance Company is not liable to pay any compensation. In the additional counter, it has been specifically contended that since the owner of the vehicle has remained ex parte and not furnished the details about the vehicle, they have wrongly mentioned the Auto as a load Auto and now, they come to know that the Auto in which the claimants were travelling was a passenger vehicle. The permitted capacity for a passenger auto is only 3 +1. No extra premium was paid by the vehicle owner to cover the wider risk. At the time of accident, seven passengers along with the driver totally eight persons were travelling. This is in contradiction and violation to the policy condition and permit condition.

6.Before the Tribunal, on the side of the claimants, 22 documents were marked and four claimants were examined as witnesses. On the side of the respondent/Insurance Company, six documents were marked and two witnesses were examined.

7.The Tribunal, after considering the First Information Report, held that the accident has caused due to rash and negligence driving of the Auto driver and consolidated sum of Rs.35,500/- was awarded to Dhanapakkiyam in M.C.O.P.No.21 of 2015; Rs.25,500/- was awarded to Ramadevi in M.C.O.P.No.29 of 2015; Rs.34,000/- was awarded to Palaniyammal in M.C.O.P.No.31 of 2015; and Rs.40,000/- was awarded to Janaki in M.C.O.P.No.33 of 2015 and the Tribunal has directed the Insurance company/respondent to pay the award amount with interest at the rate of 7.5% p.a., from the date of petitions till the date of realisation along with cost and permitted the Insurance Company to recovery the same from the owner of the vehicle/1st respondent herein, since there is a violation of policy condition. The principle of pay and recovery was applied by the Tribunal following the judgment of the Madras High Court reported in 2013 (1) TNMAC 850 [Senior Divisional Manager, United India Insurance Company Limited vs. Ajay Bihani and others].

8.These four appeals are filed by the Insurance Company being aggrieved by the award of the Tribunal fixing the liability on the Insurance Company inspite of the policy condition and the statute violation.

9.In the appeals, it is contended that the auto in which the claimants were travelling, is permitted to carry only three passengers and the driver of the Auto had only light motor vehicle without badge endorsement. Having proved the grave policy violation and Act violation, the Tribunal ought to have exonerated the Insurance Company totally. The assessment of compensation awarding the consolidated amount without any evidence also faulted in these appeals.

10.The learned counsel appearing for the appellant/Insurance Company emphasised upon the violation of the policy condition and the absence of badge endorsement in the driving licence since the auto being a public carrier.

11. The Hon'ble Supreme Court in Mukund Dewangan v. Oriental Insurance Co. Ltd.,[2017 AIR(SC) 3668] as observed that, as per the definition under Section 2(21) and (23) of Motor Vehicles Act, 1988, "'light motor vehicle' continued, to cover both 'light passenger carriage vehicle' and 'light goods carriage vehicle'. A driver who had a valid licence to drive a light motor vehicle, is authorised to drive a light goods vehicle as well." and in S.Iyyapan v. M/s United India Insurance Company Ltd. and another reported in [(2013) 7 SCC 62], it is held that the driver, who had a licence to drive "light motor vehicle" could drive "light motor vehicle" used as a commercial vehicle, without obtaining endorsement to drive a commercial vehicle and in such case, the Insurance Company could not disown its liability.

12.Therefore, the appellant/Insurance Company cannot disown its liability on the point of invalid driving licence. However, the Tribunal has rightly found that there is a permit violation by carrying more than three passengers in the Auto, therefore, had given liberty to the Insurance Company/appellant to pay the compensation to the claimants and to recover the same from the owner of the vehicle. In the said facts and circumstances, this Court is of the view that there is no ground to interfere with the award of the Tribunal.

13.In the result, these Civil Miscellaneous Appeals are dismissed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Nagapattinam.

+1cc to Mr.J.Chandran, Advocate SR.No.606

C.M.A.Nos.119 to 122 of 2017
and
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CNR(CO)
GMY(06/09/2021)