

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	21.12.2020
DELIVERED ON	06.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD) Nos.1775 and 1819 of 2010

and

MP(MD)Nos.1 and 1 of 2010

Royal Sundaram Alliance Insurance Company Limited,
No.46, Whites Road, Chennai-14.

.. Appellant in both appeals/
2nd Respondent in both M.C.O.Ps

vs.

1.N.Thirupathy .. 1st Respondent in CMA(MD)No.1775 of 2010/
1st Petitioner in M.C.O.P No.1044 of 2005

2.N.Neethipathy .. 2nd Respondent in both appeals/
1st Respondent in both M.C.O.Ps

3.A.Mahali .. 1st Respondent in CMA(MD)No.1819 of 2010/
2nd Petitioner in M.C.O.P No.1045 of 2005

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act 1988, against the fair and decreetal orders, dated 16.06.2010 made in M.C.O.P.Nos.1044 and 1045 of 2005, on the file of the II Additional Sub-Judge, (Motor Accident Claims Tribunal), Tiruchirapalli.

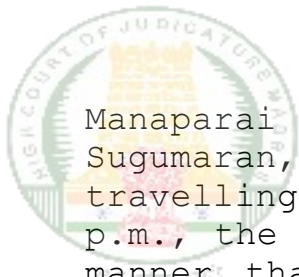
For Appellant : Mr.S.Srinivasa Raghavan
(in both appeals)

For Respondents : No Appearance
(in both appeals)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/2nd respondent against the fair and decreetal orders, dated 16.06.2010 made in M.C.O.P.Nos.1044 and 1045 of 2005, on the file of the II Additional Sub-Judge, (Motor Accident Claims Tribunal), Tiruchirapalli.

2.The case of the claimants before the Tribunal is that on 18.01.2005 at about 02.00 p.m, the claimants and three others have loaded their vegetables in the 2nd respondent/1st respondent Mini Door Auto bearing Registration No.TN-55-K-4585 from Kodumbalur to



Manaparai Santhai, on rental basis. The vehicle was driven by one Sugumaran, the driver of the vehicle and one Ayyakkannu was also travelling in the said vehicle as a load man. At about 03.00 p.m., the vehicle was driven by its driver in a rash and negligent manner that too, with high speed without observing the traffic rules, in order to avoid collusion with opposite vehicle rashly and negligently turned the vehicle to the left side and to right side forcibly thereby, the auto capsized on the northern side. Therefore, the claimants and others have sustained injuries. They were taken to Government Hospital, Trichy and discharged on 22.01.2005. Even after that, the claimants have taken treatment as out patient and a case in Crime No.22 of 2005 was registered, on the file of the Viralmalai Police Station against the driver. The claimants were doing vegetable vending business and they were earning not less than Rs.5,000/- p.m. Because of the permanent disability, they could not continue their work as earlier. So, they approached the Tribunal claiming compensation at Rs.4,00,000/- each.

3.In the counter of the appellant/2nd respondent, the occurrence was disputed, the nature of the injury suffered by the claimants was also disputed. The claimants travelled in the Mini Door Auto as an unauthorised passenger and not as the owner of the vehicle. Since there is a violation of policy condition as well as the Motor Vehicle Act, the claimants are not entitled for compensation from the appellant/2nd respondent.

4.Before the Tribunal, on the side of the claimants, three witnesses were examined and five documents marked. On the side of the appellant/2nd respondent and the 2nd respondent/1st respondent one witness was examined and three documents marked.

5.A joint trial was conducted by the Tribunal in both the matters in M.C.O.P.Nos.1044 and 1045 of 2005 as both the claimants have travelled in the same vehicle and also claimed compensation amount at Rs.4,00,000/- each. The claimants suffered grievous injury. After taking treatment in Government Hospital, Trichy, because of the accidental injury, they could not continue their job as earlier.

6.At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place, due to the rash and negligent driving on the part of the 2nd respondent/1st respondent's vehicle driver. Regarding the compensation, the claimant in M.C.O.P.No.1044 of 2005 was awarded compensation at Rs.83,500/- and the claimant in M.C.O.P.No.1045 of 2005 was awarded compensation of Rs.10,000/- with 7.5% interest and costs and the Tribunal has further directed the appellant/2nd respondent to deposit the award amount on behalf of the 2nd respondent/1st



respondent at the first instance and then to recover the same from the owner of the vehicle.

7.Challenging the same, the appellant/insurance company has filed these appeals.

8.According to the appellant/Insurance Company, there is a policy violation, since seating capacity is only 1+1, there is no evidence on the part of the claimants to prove that they were travelling either as coolie or load man.

9.The Tribunal has found that the claimants travelled on the cargo portion of the vehicle as unauthorised passengers. The appellant/Insurance Company can be exonerated from his liability. There is no cross objection from the claimants.

10.So, the only the point for consideration is that whether the order of the Tribunal in directing the payment and to recover the same from the owner is sustainable?

11.Even though there is no cross objection, it is the duty of this Court to find out the capacity of the claimants by taking into account, the evidence on record, finding of the Tribunal P.W.1 and P.W.2 would say that they were travelling in the vehicle along with vegetable to sell the same in Manaparai market. P.W.1 would state that totally four persons travelled in the vehicle and three persons were sitting in the cargo area and one Ayyakannu travelled in the cabin area. P.W.2-Mahali would say that he was also sitting in the cargo area. Ex.A.1 is the copy of the First Information Report registered on the basis of statement of one Ayyakannu, who said to have travelled in the vehicle in the cabin area and he has stated that he was working as a load man in the Mini Door Auto bearing Registration No.TN-55-K-4584, the claimants loaded vegetable in Kodumbalur Market and proceeding to Manaparai and four persons, namely, Thirupathi, Subramani, Mahali and Murugan were sitting in the cargo area. At that time, due to rashness on the part of the driver, the vehicle capsized.

12.From the reading of the First Information Report, it is seen that the claimants were travelling in the vehicle along with the vegetables. Ex.B.2, is the policy, the owner of the vehicle was also examined. It is seen that it is a package policy. So, the premium has also included towards various categories of persons such as driver, cleaner, coolies and non-fare paying passenger and this has been narrated by the claimants before the Tribunal to argue that these persons have also been covered in the policy and so, the appellant/Insurance Company is liable to pay the compensation. In this regard, the other injured persons, namely, Ayyakannu and others and the appellant/Insurance Company



have filed C.M.A.Nos.3448, 3637 to 3639 of 2006, the judgment dated 02.04.2009, was marked as Ex.B.1. The Tribunal came to the conclusion that Murugan and Sugumaran were not travelling as the owner of the goods, they were only gratuitous passengers. The vehicle can carry only a driver and another person. Totally only two persons can travel in the vehicle. Ayyakannu was travelling in the cabin area was found to be covered under the insurance policy others were not. On that ground, it was confirmed, there is a clear finding by this Court to that effect only Ayyakannu, who was the first informant alone was covered and others are not. So, no different finding can be recorded by this Court. The insurance company need not be fastened with liability against the damages to the third party who are gratuitous in nature. So, the question of pay and recovery is not permitted, which position is more or less now well-settled. So, the order of the Tribunal directing the appellant/2nd respondent to pay the amount and recover the same from the 2nd respondent/1st respondent requires to be set aside. Regarding the compensation awarded by the claimants, I find no reason to differ. Since there is no argument advanced by the appellant/Insurance Company on this point, fixing the compensation is confirmed in both the appeals.

13.In the result, these Civil Miscellaneous Appeals are allowed and the appellant/Insurance Company is discharged from the payment of compensation to the claimants as ordered by the Tribunal, dated 16.06.2010 made in M.C.O.P.Nos.1044 and 1045 of 2005 on the file of the II Additional Sub-Judge, (Motor Accident Claims Tribunal) Tiruchirapalli, are set aside. The 2nd respondent/1st respondent is directed to deposit the entire award amount with accrued interests and costs, within a period of two months from the date of receipt of a copy of this order. If any award amount has been deposited by the appellant/Insurance Company, it is permitted to withdraw the same. On such deposit being made, the claimants are permitted to withdraw the entire award amount with accrued interests and costs as per the ratio of apportionment made by the Tribunal by filing formal petition before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sjj



To

1.The II Additional Sub Judge,
(Motor Accident Claims Tribunal), Tiruchirapalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai (2 copies).

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-457[F] dated
07/01/2021)

Judgment Made In
C.M.A(MD) Nos.1775 and 1819 of 2010
06.01.2021

SV2 (CO)
TR(10.02.2021) 5P 5C