IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.Nos.1986, 1988, 1991, 1992 and 1994 of 2021
and
C.M.P.Nos.10707, 10713, 10723, 10730 and 10739 of 2021

C.M.A.No.1986 of 2021:

M/s.TATA AIG General Insurance Company Limited,
Third Party Cell,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008. ... Appellant

vs.

1.Mrs.Seetha
2.Mr.D.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.130 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

C.M.A.Nos.1988 of 2021:

M/s.TATA AIG General Insurance Company Limited,
Third Party Cell,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008. ... Appellant

vs.

1.Mr.Janakiraman
2.Mr.D.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.129 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

C.M.A.No.1991 of 2021:

M/s.TATA AIG General Insurance Company Limited,
Third Party Cell,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008. ... Appellant

vs.

1.Mr.Elumalai
2.Mr.D.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.132 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

C.M.A.No.1992 of 2021:

M/s.TATA AIG General Insurance Company Limited,
Third Party Cell,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008. ... Appellant

vs.

1.Mr.E.Raja Gopal
2.Chinna Ponnu
3.Mr.D.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.128 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

C.M.A.No.1994 of 2021:

M/s.TATA AIG General Insurance Company Limited,
Third Party Cell,
No.1, Ethiraj Salai, Egmore,
Chennai-600 008. ... Appellant

vs.

1.Mr.E.Raja Gopal
2.Mr.D.Babu ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree made in M.C.O.P.No.131 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur.

For Appellant : Mr.M.B.Raghavan
(in all cases) for M/s.M.B.Gopalan Associates

For Respondents : Mr.K.Varadha Kamaraj [Caveator counsel for R1 in C.M.A.Nos.1986, 1988, 1991 and 1994 of 2021and R1 and R2 in C.M.A.No.1992 of 2021]
R2 – served – No Appearance in C.M.A.Nos.1986, 1988 and 1991 of 2021

R2 – Not Ready in Notice in
C.M.A.No.1994 of 2021.
R3 - served – No Appearance in
C.M.A.No.1992 of 2021.

COMMON JUDGMENT

All the appeals arise out of a single accident.

2. The brief facts are that:

Each of the petitioners in various M.C.O.Ps., had travelled in the Tata mini van bearing Reg.No.TN-20-AQ-9717 belonging to the 1st respondent insured with the 2nd respondent.

3. The vehicle had met with an accident when it hit a teak tree, as a result of which the persons who travelled in the vehicle had sustained injuries. The petitioners in M.C.O.P.No.128 of 2019 are the parents of one of the passenger Dillibabu who had died in the said accident. All the other passengers who had filed claim petitions had only sustained injuries.

4. There are totally 5 claim petitions, the petitioners/claimants have contended that they were travelling in the Tata mini van bearing

Reg.No.TN-20-AQ-9717 as hirers for selling fruits. Admittedly, the vehicle in question is a goods vehicle and therefore, the petitioners / claimants had filed separate claim statements.

5. The Insurance Company who had contested the claim had taken a defence that the vehicle had a seating capacity of just two including the driver, whereas, the vehicle was carrying over 7 persons at the time of the accident which is clearly a breach of the policy conditions and therefore, they are not liable to pay compensation.

6. The Tribunal below however accepted the fact that the passengers had been travelling as gratuitous passengers, but, however ordered pay and recovery. Challenging the same, the appellant/Insurance Company is before this Court.

7. The Tribunal had observed that since it is a violation of insurance policy conditions, the Insurance Company shall make payment and recover the same from the 1st respondent/insurer.

8. Aggrieved by this order, the Insurance Company has filed these appeals.

9. Mr.M.B.Raghavan, the learned counsel appearing on behalf of the Insurance Company would submit that this is a case of violation of provisions of Section 147(1) of the Motor Vehicles Act. Under Section 147 of the Motor Vehicles Act, the Insurance Company is not required to cover the liability in respect of the passengers in goods vehicle except for those travelling as owner or as the owner of the goods being carried on the vehicle. He would further submit that since there is no statutory requirement to cover gratuitous passengers, the Insurance Company cannot be directed to pay and later recover the same from the owner. In support of the above argument, he would place the judgment of the Division Bench of this Court in the case of ***Bharati AXA General Insurance Co. Ltd., vs. Aandi*** reported in ***2018 (2) TANMAC 731(DB)***, where the learned Judge had taken note of the judgment of the Full Bench of this Court reported in ***2009 (1) CTC 1*** in the case of ***United India Insurance Co. Ltd., vs. Nagammal and others***, where the Full Bench after elaborate reference to the various judgment had ultimately made its conclusion and in paragraph Nos.31 (3)

and (4) the learned Full Bench had observed as follows:

> *"(iii) Under Section 147 the Insurance Company is not statutorily required to cover the liability in respect of a Passenger in a Goods Vehicle unless such Passenger is the Owner or Agent of the Owner of the goods accompanying such goods in the concerned Goods Vehicle.*
>
> *(iv) Since there is no Statutory requirement to cover the liability in respect of a Passenger in a Goods Vehicle, the Principle of "Pay and Recover", as statutorily recognised in Section 149(4) & Section 149(5), is not applicable ipso facto to such case and, therefore, ordinarily the Court is not expected to issue such a direction to the Insurance Company to pay to the Claimant and thereafter recover from the Owner."*

Therefore, in the light of the above, the award passed by the Motor Accident Claims Tribunal insofar as it directs the insurance company to pay the compensation and recover the same from their insured has to necessarily be set aside and consequently, the 1st respondent is liable to pay the compensation.

10. The next point that has been argued is with reference to the fact that the vehicle is a two seater vehicle where apart from the the driver one more person can travel. One of the passenger has sustained fatal injuries, therefore, drawing strength from the judgment of the Division Bench of this Court in the case of ***Royal Sundaram Alliance General Insurance Co. Ltd., vs. P.Ayyakannu and Others*** reported in (***2009) 5 MLJ 707***, which in turn has relied upon the judgment of the Hon'ble Supreme Court reported in (***2007) 7 SCC 445,*** in the case of ***National Insurance Company Ltd., vs. Anjana Shyam,*** the deceased passenger shall considered as the other person travelled in the cabin of the vehicle along with the driver and shall therefore be entitled to claim compensation. The compensation awarded to the petitioner is reasonable and does not call for any interference.

11. In the result, C.M.A.No.1992 of 2021 is dismissed and the Judgment and Decree made in M.C.O.P.No.128 of 2019 dated 14.10.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur is confirmed and as regards C.M.A.Nos.1986, 1988, 1991, and 1994 of 2021, the same are allowed and the Judgment and Decree made in M.C.O.P.Nos.130,129, 132 and 131 of 2019 dated 14.10.2019 on the file

of the Motor Accident Claims Tribunal, Special District Court, Tiruvallur, are set aside and the appellant/Insurance Company is exonerated from the liability and the claimants shall recover the compensation awarded by the Tribunal from the 1st respondent/owner of the vehicle. No costs. Consequently connected miscellaneous petitions are closed.

19.10.2022

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Special District Court,
Tiruvallur.

2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

P.T.ASHA, J.,

ssn

C.M.A.Nos.1986, 1988, 1991, 1992 and 1994 of 2021
and
C.M.P.Nos.10707, 10713, 10723, 10730 and 10739 of 2021

19.10.2022