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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.04.2022
CORAM
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A.Nos.1322 to 1324 of 2020
and
C.M.P.Nos.9562, 9564 & 9567 of 2020

M/s.Reliance General Insurance Company Limited,
'Heavitree' Unit No.1, 3rd Floor,
No.23, Spur Tank Road,
Chennai - 600 031.

...Appellant
in all the appeals/2nd Respondent

Vs.

1.N.Rani
2.T.G.Ravi
3.M.Shanmuga Pandey

...1 & 2 Respondents/Petitioners
...3rd Respondents/1st Respondent
in C.M.A.No.1322 of 2020

1.R.Rajendran
2.Minor R.Suresh
rep.by his father and next friend
R.Rajendran
3.M.Shanmuga Pandey

...1 & 2 Respondents/Petitioners
...3rd Respondents/1st Respondent
in C.M.A.No.1323 of 2020

1.M.Buvaneswari
2.M.Shanmuga Pandey

...1st Respondents/Petitioners
2nd Respondent/1st Respondent
in C.M.A.No.1324 of 2020

Common Prayer: Civil Miscellaneous Appeals filed under
Section 173 of Motor Vehicle Act, 1988 against the award and
decree dated 23.07.2019 made in M.C.O.P.Nos.160, 161 and 159 of
2010 by the Motor Accidents Claims Tribunal/II Judge, II Court
of Small Causes, Chennai.



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For Appellant

: Ms.Harini
for M/s.M.B.Gopalan Associates
in all the appeals

For Respondents

: Mr.N.M.Elumalai
for R1 and R2
in C.M.A.Nos.1322 & 1323/2020
for R1 in C.M.A.No.1324/2020
Not ready notice reg.
for R3 in C.M.A.Nos.1322 &
1323/ 2020
and R2 in C.M.A.No.1324/2020

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

[Judgment of the Court was delivered K.KALYANASUNDARAM, J.]

Challenging the award dated 23.07.2019 passed by the Motor Accidents Claims Tribunal/ II Judge, II Court of Small Causes, Chennai in M.C.O.P.Nos.159, 160 and 161 of 2010, the Insurance Company has preferred these appeals in C.M.A.Nos.1322, 1323 and 1324 of 2020.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The facts in nutshell are as follows :

(i) On 02.08.2009 at about 4.40 a.m, the deceased and the injured claimant were travelling in a Mini Lorry bearing Registration No.TN 5J 5526 from Koyambedu Market to Thiruporur. When they were nearing Kolapakkam Village, the driver driven the vehicle in a rash and negligent manner and dashed against the center median and the lorry got capsized. Due to the impact, Krishnaveni and R.Sathya died and M.Buvaneswari sustained injuries.

(ii) Seeking compensation against the owner of the lorry and its insurer M/s.Reliance General Insurance Co., Ltd., the injured claimant filed M.C.O.P.No.159 of 2010 and the legal heirs of the deceased filed M.C.O.P.Nos.160 and 161 of 2010, claiming compensation of Rs.10,00,000/- each.

4. The first respondent remained ex-parte before the Tribunal. The claim petitions were contested by the Insurance Company on various grounds and specifically stated that only three persons are permitted to travel in the Mini Lorry, but at



the relevant point of time, ten persons travelled, which is in violation of the policy conditions and also there is no valid permit for the Mini Lorry. That apart, they had disputed the other claims made in the claim petition.

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5. To substantiate the case on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 23 documents were marked as Ex.P1 to Ex.P23. On the side of the Insurance Company, R.W.1 was examined and Exs.R1 and R2 were marked. Ex.C.1 Disability Certificate was marked as Court Document.

6. The Tribunal, after analysing the entire evidence, found that the accident had occurred due to rash and negligent driving of the driver of the Mini Lorry. The Tribunal further held that the driver of the lorry allowed to travel persons more than the permissible limit, which is against the policy conditions. Since there is a violation of policy conditions, the Tribunal granted an order to pay and recover. Therefore, the 2nd respondent/Insurance Company has to pay the compensation at first instance and thereafter, recover the same from the owner of the vehicle. The break-up details of the compensation awarded by the Tribunal in each of the M.C.O.Ps are as under :

(i) In MCOP.No.159 of 2010

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
1.	Pain and Sufferings	50,000
2.	Extra Nourishment	10,000
3.	Transportation to Hospital	10,000
4.	Damages to clothes	500
5.	Attender Charges	1,400
6.	Medical expenses	1,09,771
7.	Future Medical Expenses	10,000
8.	Loss of Income	10,000
9.	Loss of Amenities	10,000
	Total	2,11,671



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(ii) In MCOP.No.160 of 2010

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
1.	Loss of Dependency	7,92,000
2.	Loss of Love and Affection	50,000
3.	Parental Consortium	50,000
4.	Funeral Expenses	15,000
	Total	9,07,000

(iii) In MCOP.No.161 of 2010

S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
1.	Loss of Dependency	20,40,000
2.	Loss of Consortium	40,000
3.	Loss of Love and Affection	1,00,000
4.	Parental Consortium	1,00,000
5.	Funeral Expenses	15,000
	Total	22,95,000

7. It is the main contention of the learned counsel for the appellant/Insurance Company, the Mini Lorry is a goods vehicle. As per the seating capacity of the vehicle, only 2+1 persons are permitted to travel. However, at the time of accident, ten persons travelled in the rear side of the vehicle, in violation of the policy conditions. Since they travelled in the goods carrier vehicle as gratuitous passengers, the Insurance Company is not liable to pay compensation. Though the Tribunal arrived at such a finding, however, instead of fixing the liability on the owner of the vehicle, erroneously directed the appellant/Insurance Company to pay the compensation, and thereafter, recover the same from the owner of the vehicle. It is his further contention that the quantum of compensation awarded by the Tribunal is on the higher side.

8. In support of his contention, the learned counsel for the appellant relied upon the decision of the Apex Court in National Insurance Co.Ltd. Vs.Anjana Shyam & Others reported in 2007(2) TN MAC 193(SC) and the judgment of this Court in Royal Sundaram Alliance General Insurance Co.Ltd. V. P.Ayyakannu and



Others reported in MANU/TN/1344/2009.

9. Further, the learned counsel for the appellant also relied upon Rules 236 and 238 of Tamil Nadu Motor Vehicles Rules, 1989 and stated that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation at the rate of thirty eight centimeters measured along the seat, excluding the space reserved for the driver, for each person and not more than six persons in all in addition to the driver shall be carried in any goods carriage.

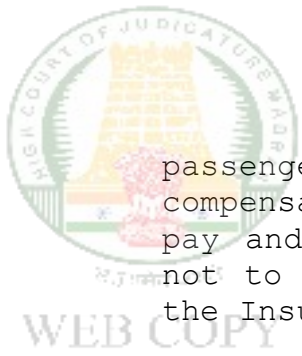
10. Per contra, the learned counsel for the claimants contended that the claimants travelled in the goods vehicle for their business purpose with the consent of the driver of the vehicle. So, the deceased and the injured claimant are not unauthorized passengers. After analysing the entire materials, the Tribunal has rightly arrived at a conclusion that the Insurance Company has to pay and recover the compensation.

11. We have heard the submissions made by the learned counsel for the appellant/Insurance Company and the learned counsel for the respondents/claimants and also perused the materials available on record.

12. Now, the only question that arises for consideration in this appeal is as to whether the liability fixed on the Insurance Company is sustainable.

13. Rule 236 of Tamil Nadu Motor Vehicles Rules states explicitly that no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. Thus, the above provision is crystal clear that if any violation is committed regarding seating capacity, it is to be treated as violation of Rules. It is an admitted fact that the Mini lorry which met with an accident, is having the seating capacity of three persons, including the driver. The Tribunal itself arrived at a conclusion that mere existence of a valid insurance policy is insufficient to fix the liability. If there is any violation of policy conditions or the statutory violations are brought before the notice of the Tribunal, then the Tribunal has to scrutinize the policy documents with reference to the provisions of the Motor Vehicles Act and Rules and come to a conclusion whether the Insurance Company is liable to pay compensation or not.

14. In the present case, the Tribunal rightly found that the deceased and injured claimant travelled only as gratuitous



passengers and the owner of the lorry is solely liable to pay compensation. Then, there is no reason whatsoever to order for pay and recover from the Insurance Company. The Tribunal ought not to have granted pay and recover by fixing the liability on the Insurance Company.

15. Considering the above facts and circumstances, we are of the considered opinion that the findings of the Tribunal in ordering pay and recover is not proper. Thus, the claimants are entitled to get compensation from the owner of the Mini Lorry bearing Registration No. TN 5J 5526.

16. The quantum of compensation awarded by the Tribunal is just and fair and hence, the same is confirmed in all the appeals.

17. In view of the above, these Civil Miscellaneous Appeals are allowed by setting aside the common award and decree passed in M.C.O.P. Nos. 159, 160 and 161 of 2010, insofar as the fixation liability on the Insurance Company is concerned. The owner of the vehicle is liable to pay the compensation awarded by the Tribunal together with interest at 7.5% per annum from the date of the claim petition till the date of realization. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

ms
To
1. The Motor Accident Claims Tribunal,
The Judge,
II Court of Small Causes,
Chennai.

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

+3 ccs to Mr. N.M. Elumalai Advocate sr23951 to 23953

C.M.A. Nos. 1322 to 1324 of 2020
and

C.M.P. Nos. 9562, 9564 & 9567 of 2020

aa06/06/2022