IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2734 to 2740 of 2016
and
CMP.Nos.19774 to 19780 of 2016

The Divisional Manager,
The New India Assurance Company Limited,
Trichy.
... Appellant in C.M.A. Nos. 2734, 2735, 2736, 2737, 2738 of 2016

The New India Assurance Company Limited,
Chennai.
... Appellant in C.M.A. Nos. 2739 & 2740 of 2016

Vs.

1.Alageswari
2.Pachaiyammal
3.Minor Sambooranam
(Minor rep by her elder sister Alageswari, 1st respondent)
4.C.Santhi
5.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam.

.. Respondents in CMA.Nos.2734 & 2735 of 2016

1.Kumar @ Selvakumar
2.Minor Arun
3.Minor Nivetha
(Minors rep by their guardian
& father Kumar @ Selvakumar)
4.C.Santhi

5.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam.

.. Respondents in CMA.No.2736 of 2016

1.Firoskhan
2.C.Santhi
3.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam. .. Respondents in CMA.No.2737 of 2016

1.Selvarani
2.C.Santhi
3.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Kumbakonam.
.. Respondents in CMA.No.2738 of 2016

1.M.Rani
2.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Dn.II), Trichirapalli.
3.C.Santhi
4.M.Mani
.. Respondents in CMA.No.2739 of 2016

1.Kumaresan
2.The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Dn.II), Milaguparai.
3.C.Santhi
... Respondents in CMA.No.2740 of 2016

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 31.10.2012 made in M.C.O.P.Nos.53, 54, 55, 73, 74, 96 and 97 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

In all C.M.As.

For Appellant : Mr.M.Krishnamoorthy

In C.M.A.Nos.2734 to 2736 of 2016:

For Respondents : Mr.P.Parthikannan
for Mr.S.Kaithamalai Kumaran for RR1 to 3
No appearance for R4
Mr.D.Venkatachalam for R5

In C.M.A.Nos.2737 & 2738 of 2016:

For Respondents : No appearance for R1 & R2
Mr.D.Venkatachalam for R3

In C.M.A.No.2739 of 2016:

For Respondents : Mr.C.Senapathi for R1
Mr.D.Venkatachalam for R2
No appearance for R3
R4- Notice dispensed with

In C.M.A.No.2740 of 2016:

For Respondents : Mr.C.Senapathi for R1
Mr.D.Venkatachalam for R2
No appearance for R3

COMMON JUDGMENT

The matter is heard through "Video Conferencing".

These Civil Miscellaneous Appeals have been filed by the appellant-Insurance Company to set aside the common award dated 31.10.2012 made in M.C.O.P.Nos.53, 54, 55, 73, 74, 96 and 97 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur.

2.All these Civil Miscellaneous Appeals are arising out of the same accident and common award and hence, they are disposed of by this common judgment.

3.The appellant in all the appeals is the 2nd respondent-Insurance Company in M.C.O.P.Nos.53, 54, 55, 73 and 74 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur and 3rd respondent in M.C.O.P.Nos.96 and 97 of 2007 on the file of the Motor Accident Claims Tribunal, Principal District Court, Perambalur. The respondents 1 to 3 in C.M.A.Nos.2734 to 2736 of 2016 filed the above said claim petitions, claiming a sum of Rs.5,00,000/- each as compensation for the death of Tamilselvi, Manickam and Dhanalakshmi respectively who died in the accident that took place on 20.12.2006. The 1st respondent in C.M.A.Nos.2737 to 2740 of 2016 filed the above said claim petitions, claiming a sum of Rs.30,000/-, Rs.30,000/-, Rs.7,00,000/- and Rs.1,00,000/- respectively as compensation for the injuries sustained by them in the same accident.

4.The parties are referred to as claimants, Transport Corporation, owner of auto and New India Insurance Company as insurer of auto for the sake of convenience.

5.According to the claimants, on 20.12.2006 at about 8.50 a.m., while the claimants in M.C.O.P.Nos.73, 74, 96 and 97 of 2007 along with deceased Tamilselvi, Manickam and Dhanalakshmi were travelling in the auto bearing Registration No.TN 46 E 1994 on the National Highway from Eraiyasamuthiram to Perambalur, near Thuraimangalam Eerikarai, the driver of the auto drove the same in a rash and negligent manner and dashed against the bus belonging to the Transport Corporation, which was coming in the opposite direction. Due to the said impact, there was a head on collision of the vehicles and thus the accident occurred. In the accident, the claimants in M.C.O.P.Nos.73, 74, 96 and 97 of 2007 sustained grievous injuries and Tamilselvi, Manickam and Dhanalakshmi sustained fatal injuries and thus, the claimants filed the above said claim petitions, claiming compensation against the owner and insurer of the auto as well as the Transport Corporation.

6.The insurer of the auto/New India Insurance Company filed separate counter statements, denying all the averments made in the claim petitions and stated that they are not liable to pay any compensation, as driver of the auto did not possess valid driving license at the time of accident. The driver of the Transport Corporation bus drove the same in a hectic speed, hit on the back side of the auto and caused the accident and hence, the driver of the bus also contributed to the accident. The Insurance Company specifically denied the sole liability and further stated that permitted capacity of the auto is 3 passengers + 1 driver. While so, at the time of accident, more than 7 persons have traveled in the auto. The owner of the auto has committed breach of policy conditions by entrusting the auto to the person, who did not possess valid driving license to drive passengers' vehicle and permitted him to carry more number of persons than the permitted capacity and thereby violated statutory and policy conditions. In any event, the injured claimants have to prove their age, avocation and income, injuries sustained and treatment taken, to claim compensation and legal heirs of the persons who died in the accident have to prove the age, avocation and income of the deceased persons to claim compensation and prayed for dismissal of the claim petitions.

7.The Transport Corporation filed common counter statement and submitted that at the time of accident, the bus belonging to the Transport Corporation was driven by its driver with all care and caution from Perambalur to Tiruchy. When the bus was nearing Thuraimangalam Erikarai, a lorry was coming in the opposite direction and the auto coming behind the lorry, tried to over take the lorry. On seeing this, the driver of the bus belonging to the Transport Corporation turned the bus to his right side, applied break and stopped the bus. Despite the same, the driver of the auto came in the same manner and dashed on the front side of the bus. The accident occurred only due to the fault of the driver of the auto. The Transport Corporation has preferred a claim against the Insurance Company and owner of the auto at Tiruchy Court. In any event, the compensation claimed by the claimants are highly excessive and prayed for dismissal of the claim petitions.

8.Before the Tribunal, the 1st claimant in all the claim petitions examined themselves as P.W.1 to P.W.6. Dr.Saravanan was examined as P.W.7 and marked 23 documents as Exs.P1 to P23. The respondents examined one Chinnasamy, husband of Shanthi (Owner of the auto) as R.W.1, Saravanabavan, Motor vehicle Inspector as R.W.2, Rajaram/driver of the auto as R.W.3, Kanaganathan, official of the Insurance Company as R.W.4 and marked 7 documents as Exs.R1 to R7.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that without any permission or authorization from the owner and driver of the auto, R.W.3/Rajaram took the auto on his own accord and caused the accident. There was no fault on the part of the owner of the auto or his authorised driver R.W.1/Chinnasamy. Therefore, the owner of the auto is not liable to pay any compensation and directed the Insurance Company being the insurer of the auto to pay a sum of Rs.3,75,600/-, Rs.3,18,000/-, Rs.3,71,400/-, Rs.10,000/-, Rs.10,000/-, Rs.4,57,000/- and Rs.18,000/- as compensation to the claimants.

10.Questioning the liability fastened on the them, the Insurance Company has come out with the present appeals.

11.The learned counsel appearing for the Insurance Company contended that the Tribunal erred in holding that the driver of the Auto belonging to one Shanthi, drove the same in a rash and negligent manner and he was solely responsible for the accident. The accident is head on collision. The Tribunal ought to have fixed negligence equally on the part of the driver of the bus owned by the Transport Corporation as well as the driver of the auto. The Tribunal, considering the fact that the owner of the auto violated the policy conditions by permitting more passengers than the seating capacity to travel in the auto ought to have exonerated the Insurance Company and fastened liability on the owner of the auto, since the driver of the auto did not possess valid and effective driving license to ply the vehicle at the time of accident. The Tribunal ought to have rejected the case of the owner of the vehicle that an intruder namely Rajaram/R.W.3 took the auto without permission from the owner and authorised driver of the auto, which was not supported by any documentary evidence. The Tribunal ought to have considered the fact that if the auto was really taken to the hospital in emergency, there is no possibility for more number of persons travelling as passengers and prayed for setting aside the liability fixed on the Insurance Company and allowing the appeals.

12.Mr.D.Venkadachalam, the learned counsel appearing for the Transport Corporation contended that the Tribunal dismissed the claim petitions as against the Transport Corporation and no relief is sought against the Transport Corporation in the present appeals and prayed for dismissal of the appeals against the Transport Corporation.

13.The learned counsel appearing for the claimants in C.M.A.Nos.2734 to 2736 of 2016 as well as the learned counsel appearing for the claimant in C.M.A.Nos.2739 and 2740 of 2016 made their submissions in support of the common award passed by the Tribunal and prayed for dismissal of the appeals.

14.Though notice has been served on the owner of the auto and her name is printed in the cause list, there is no representation for her, either in person or through counsel.

15.Though notice has been served on the 1st respondent in C.M.A.Nos.2737 and 2738 of 2016 and their names are printed in the cause list, there is no representation for them, either in person or through counsel.

16.Heard the learned counsel appearing for the Insurance Company, learned counsel appearing for the claimants in C.M.A.Nos.2734 to 2736, the learned counsel appearing for the claimant in C.M.A.Nos.2739 and 2740 of 2016 as well as the learned counsel appearing for the Transport Corporation and perused the entire materials available on record.

17.From the materials on record, it is seen that it is the case of the claimants that due to rash and negligent driving by driver of the auto, which dashed on the bus belonging to the Transport Corporation, the accident had occurred. In the accident, four persons died and three persons got injured. To prove their case, they examined P.W.3 to P.W.6, who traveled in the auto at the time of accident. They marked the First Information Report as Ex.P1, which was registered against the driver of the auto. On the other hand, it is the case of the owner of the auto that the accident occurred not due to the negligence of driver of the auto. The 1st respondent, owner of the auto further stated that her husband, who was the driver of the auto stopped the auto in the bus stand and went to house for taking food. At that time, without permission of her husband, the auto was taken by one Rajaram, to take one Manickam, who was suffering from stomach pain, to the Hospital. During that time, some of the persons also accompanied in the auto along with the said Manickam. He further stated that the accident is not due to rash and negligent driving by the said Rajaram and the auto was insured with the Insurance Company at the time of accident. Hence, the owner of the auto is not liable to pay any compensation, as driver Rajaram took away the auto, without permission of owner or her husband/driver of the auto and authorization of owner of auto or her husband Chinnasamy. To substantiate this contention, she examined her husband Chinnasamy as R.W.1, who deposed as that of the averments in the counter statements. In support of her contention, she has also marked Ex.R2, driving license of Chinnasamy.

18.On the other hand, it is the case of the Insurance Company that the accident occurred due to head on collision. The driver of the bus belonging to the Transport Corporation also contributed to the accident and the driver of the auto is not solely responsible for the accident. The seating capacity of the auto is only 3 + 1. At the time of accident, more than 7 persons traveled in the auto. The owner of the auto violated policy conditions. The driver of the auto did not possess valid driving license at the time of accident and hence, the Insurance Company is not liable to pay any compensation. To substantiate their contention, the Insurance Company examined their official as R.W.4, and marked Exs.R1/Insurance Policy of the auto, R4/Authorization letter of R.T.O and R5/Motor Vehicle's Inspector Report.

19.From the materials on record, it is seen that to prove the case of the Insurance Company that the driver of the bus belonging to the Transport Corporation also contributed to the accident, the Insurance Company has not produced any evidence. On the other hand, the injured claimants, who travelled in the auto at the time of accident are eye-witnesses and they have categorically deposed that the accident occurred only due to rash and negligent driving by driver of the auto. Further, the First Information Report was registered only against the driver of the auto. The Tribunal considering oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the auto. There is no error in the finding of the Tribunal warranting interference with regard to fixing negligence on the part of the driver of the auto.

20.It is the further case of the Insurance Company that at the time of accident, the driver of the auto did not possess driving license and the driver of the auto took more passengers than permitted capacity of the auto and hence, they are not liable to pay any compensation to the claimants. To prove their case, they examined R.W.2 to R.W.4 and marked Exs.R4 to R7. From the policy produced and marked as Ex.R1 by owner of the auto, it is seen that the Insurance Company has issued the said policy only to cover the risk of three passengers + one driver. It is also seen that permitted capacity of the auto is 3 + 1. Similarly, as per the evidence of R.W.2 to R.W.4 and Ex.R6/driving license of Rajaram, it is seen that the driving license of Rajaram to drive the auto was issued only after the accident. It is well settled that when the driver of the offending vehicle did not possess driving license, the Insurance Company cannot be exonerated completely. The victims are third parties. The amount awarded should not be a paper award as the Motor Vehicle's Act is a beneficial legislation and the victims' must enjoy the fruits of the amount awarded in the claim petitions. For the above reasons, the Court has consistently held that the Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle. This issue was decided by the Hon'ble Apex

Court in the judgment reported in **2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others]**, wherein, the Hon'ble Apex Court has held that non-possession of driving license by the person who caused the accident will not exonerate the Insurance Company absolutely from its liability. The Insurance Company must be directed to pay the compensation at the first instance and recover the same from the owner of the vehicle, as the Motor Vehicles Act is beneficiary legislation and the victim/claimants are third parties and they must enjoy the fruits of the award. In view of the judgment of the Hon'ble Apex Court referred to above, the Insurance Company is liable to pay compensation awarded by the Tribunal at the first instance and recover the same from the owner of the vehicle.

21.The owner of the auto contended that the driver of the auto, Rajaram, without permission or authority from the owner or driver of the auto, took the auto and he was not authorised by the owner of the auto to drive the auto at the time of accident and therefore, the 1st respondent is not liable to pay compensation and pay and recovery cannot be ordered.

22.From the materials on record, it is seen that there is nothing on record to show that the owner of the auto or authorised driver of the auto lodged complaint against the said Rajaram for having taken the auto without any authorization and using the auto unauthorizedly. In the absence of such action being taken by the owner of the auto or driver of the auto at the earliest, the contention now raised in the counter statement filed in the claim petitions is only an after thought. When Chinnasamy, husband of first respondent was examined as R.W.1, he has not produced any complaint lodged against the said Rajaram. In view of the above, the contention of the owner of the auto is not acceptable. The Insurance Company is entitled to recover the compensation paid to the claimants from the owner of the auto for violation of policy conditions.

23.The next contention of the learned counsel appearing for the Insurance Company is that when seating capacity of the auto is only 3 + 1, at the time of accident, more than 7 persons have traveled, inviting the accident and violated the permit and policy conditions. In view of the violation of permit and policy conditions, the Insurance Company is not liable to pay any compensation to the claimants.

24.The issue whether Insurance company is liable to pay compensation when more number of persons travelled in offending vehicle than permitted number is no longer res integra.

25.In the judgments of the Hon'ble Apex Court as well as the Division Bench of this Court reported in ***2004 ACJ 140[M.Anandavalliamma and others Vs. Aravind Eye Hospital and another]*** and ***2007 (2) TNMAC 202 [Thirumalainayagam and another Vs. Dheeran Chinnamalai Transportation],*** it has been held that when more number of persons than permitted capacity of persons travelled in a vehicle and more claim petitions are filed against the owner and insurer of the vehicle, it has been held that the Insurance Company is liable to pay highest amount awarded to the persons within permitted limit. The compensation so awarded must be proportionately distributed to the claimants and claimants are entitled to recover the balance amount from owner of vehicle. In the present case, at the time of accident, 7 persons have traveled. Seven claim petitions filed for death of four persons and three injuried. The Tribunal considering the materials placed before it awarded following amounts as compensation in all seven claim petitions:

S.Nos.	*C.M.A.Nos.*	*M.C.O.P.Nos.*	*Amounts*
1	2734 of 2016	53 of 2007	Rs.3,75,600/-
2	2735 of 2016	54 of 2007	Rs.3,18,000/-
3	2736 of 2016	55 of 2007	Rs.3,71,400/-
4	2737 of 2016	74 of 2007	Rs.10,000/-
5	2738 of 2016	73 of 2007	Rs.10,000/-
6	2739 of 2016	96 of 2007	Rs.4,57,000/-
7	2740 of 2016	97 of 2007	Rs.18,000/-

As per the above two judgments, the Insurance Company is liable to pay highest three compensations awarded by the Tribunal and the same has to be disbursed proportionately to all the claimants. The claimants are entitled to recover the balance amount from owner of the vehicle.

26.In view of the judgments of the Hon'ble Apex Court as well as the Division Bench of this Court cited supra, the award of the Tribunal is modified directing the Insurance Company to deposit highest three compensations viz., Rs.4,57,000/-, Rs.3,75,600/- and Rs.3,71,400/-, to the credit of claim petitions. The claimants are entitled to recover the balance amounts viz., Rs.3,18,000/-, Rs.10,000/-, Rs.10,000/- and Rs.18,000/- and (M.C.O.P.Nos.54, 73, 74 and 97 of 2007) from the owner of the vehicle. On such deposit, the Tribunal is directed to disburse the same to all the claimants in proportionate to the compensation awarded to them.

27.In the result, these Civil Miscellaneous Appeals are partly allowed and the Insurance Company is directed to deposit highest three compensations viz., Rs.4,57,000/-, Rs.3,75,600/- and Rs.3,71,400/- together with interest at the rate of 7.5% per annum from the date of petitions till the date of deposit, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. The owner of the auto is directed to deposit the balance compensation amount viz., Rs.3,18,000/-, Rs.10,000/-, Rs.10,000/- and Rs.18,000/- (M.C.O.P.Nos.54, 73, 74 and 97 of 2007) together with interest at the rate of 7.5% per annum from the date of petitions, till the date of deposit, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.Nos.54, 73, 74 and 97 of 2007. On such deposit, the Tribunal is directed to disburse the same to all the claimants in proportionate to the compensation awarded to them. The claimants in M.C.O.P.Nos.73, 74, 96 and 97 of 2007, the claimants 1 and 2 in M.C.O.P.Nos.53 and 54 of 2007 and the 1st claimant in M.C.O.P.No.55 of 2007 are permitted to withdraw their respective award amount, along with interest and costs, as per the apportionment fixed by the

Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The share amounts of the minor/3rd claimant in M.C.O.P.Nos.53 and 54 of 2007 and the claimants 2 and 3 in M.C.O.P.No.55 of 2007 are directed to be deposited in any one of the Nationalised Banks till the minors attain majority. The 1st claimant, elder sister of the minor 3rd claimant in M.C.O.P.Nos.53 and 54 of 2007 and 1st claimant, father of the claimants 2 and 3 in M.C.O.P.No.55 of 2007 are permitted to withdraw the accrued interest once in three months for the welfare of the minors. The Insurance Company is permitted to withdraw the award amount, lying in the deposit to the credit of M.C.O.P.Nos.54, 73, 74 and 97 of 2007, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petitions are also closed.

06.01.2022

Index : Yes / No
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To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

2.The Section Officer,
VR Section,
High Court,
Madras.

V.M.VELUMANI, J.

vkr

C.M.A.Nos.2734 to 2740 of 2016
and CMP.Nos.19774 to 19780 of 2016

06.01.2022