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C.M.A.Nos.1299 & 1300 of 2013

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.1299 & 1300 of 2013

and

M.P.Nos.1 & 1 of 2013

The Manager,
National Insurance Company Ltd.,
378, Mint Street,
Chennai – 600 076.

... Appellant/2nd Respondent in both CMAs

Vs.

1.Munusamy

... 1st Respondent / Petitioner in
C.M.A.No.1299 of 2013

2.Devaki

... 1st Respondent / Petitioner in
C.M.A.No.1300 of 2013

3.Thanigaivelu

... 2nd Respondent / 1st
Respondent in both CMAs

Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 11.10.2007 made in M.A.C.T.O.P.Nos.588 and 589 of 2006 on the file of the Court of the Additional District Judge, Fast Track Court No.V, Chengalpattu, Motor Accident Claims Tribunal at Tiruvallur.



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For Appellant : Mr.S.Vadivel
(in both appeals)

For Respondents : Mr.S.Gopi [R1]
(in both appeals) Died (Steps due) [R2]

COMMON JUDGEMENT

Challenging the common award dated 11.10.2007 passed by the Additional District Judge, Fast Track Court No.V, Chengalpattu, Motor Accident Claims Tribunal at Tiruvallur in M.A.C.T.O.P.Nos.588 and 589 of 2006, the appellant/insurance company is before this Court.

2. On 28.03.2005 at about 9.00 a.m., both the petitioners and others travelled in Mahindra Van bearing Reg.No.TN-50-A-5695 from Redhills to Sozhavaram on Thiruvallur High Road near Ambedkar Nagar, the van driven in a rash and negligent manner capsized, as a result of which, they sustained grievous injuries all over the body. Thereafter, they filed claim petitions claiming a sum of Rs.1,00,000/- each respectively in M.A.C.T.O.P.Nos.588 and 589 of 2006.



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3. Before the Tribunal, the claimants have examined themselves as P.W.1 and P.W.2 and examined the doctor as P.W.3 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, no witnesses were examined and one document viz., Ex.R.1 was marked. After adjudication, the Tribunal awarded a sum of Rs.38,000/- and Rs.33,000/- respectively to the claimants along with interest at the rate of 7.5% p.a. by ordering pay and recovery. Aggrieved by the said common award, the insurance company is before this Court.

4. The learned counsel appearing for the appellant submitted that instead of 13 persons, about 35 persons have travelled in the van at the time of accident, which is a clear breach of policy conditions. He also submitted that, though only two persons have filed claim petitions and remaining persons have not filed any claim petition, however, contrary to the policy condition and permit condition, huge number of persons have travelled in the van, thereby the van capsized, for which, fastening the liability against the appellant/insurance company is wholly unsustainable. Accordingly, he prays for allowing the appeals.



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5. Per contra, the learned counsel appearing for the respective first respondent submitted that, though 13 persons are permitted to travel in the van and only two persons have filed claim petitions, however, all the passengers, who have travelled in the van are entitled to claim compensation as per the policy condition. Therefore, he submitted that the Tribunal had rightly awarded compensation in favour of the claimants, which does not require any interference. Accordingly, he prays for dismissal of the appeals.

6. Heard the learned counsel appearing for the appellant in both the appeals and the learned counsel appearing for the respective first respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the liability fixed against the appellant by the Tribunal. It is claimed by the appellant/insurance company that as per the policy condition, the seating capacity of the van



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is only 13, however, at the time of accident, about 35 persons have travelled in the van, which is a clear violation of policy conditions and thereby, necessarily the tribunal has to absolve the appellant/insurance company of its liability and further, the driver of the van was not in possession of valid driving licence. However, in order to prove its claim, no investigation report has been filed and no investigator has been examined by the appellant/insurance company before the Tribunal. It is seen from FIR/Ex.P.1 that about 35 persons have travelled in the van and even if it is to be construed that the seating capacity of the vehicle is only 13 and the policy covers the risk of only 13 persons, it is even the admitted case of the parties that only two persons have made claim in respect of the above said accident. Such being the case, the appellant cannot divest his responsibility to compensate for the injuries sustained by the claimants. Therefore, in view of the above position, this Court does not find any fault with the impugned award. Hence, the appeal is liable to be dismissed.

8. Accordingly, these Civil Miscellaneous Appeals are dismissed and the judgment and decree dated 11.10.2007 made in



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M.A.C.T.O.P.Nos.588 and 589 of 2006 on the file of the Additional District Judge, Fast Track Court No.V, Chengalpattu, Motor Accident Claims Tribunal at Tiruvallur is confirmed. Further, the appellant/insurance company is directed to deposit the entire compensation amount awarded by the Tribunal to the credit of M.A.C.T.O.P.Nos.588 and 589 of 2006, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to disburse the amount directly to the bank account of the claimants through RTGS within a period of two (2) weeks thereafter. Thereafter, the appellant/insurance company is at liberty to recover the compensation amount from the second respondent in both the appeals/owner of the van in the manner known to law. No costs. Consequently, the connected miscellaneous petitions are closed.

16.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



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- 1.The Motor Accidents Claims Tribunal,
Additional District Judge, Fast Track Court No.V,
Chengalpattu.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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