IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.03.2023
Pronounced on	16.06.2023

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.M.A.Nos.860 to 862 of 2022 and 3270 of 2019
and
C.M.P.Nos.18851 of 2019

National Insurance Co.Ltd.,
Divisional Office – II, Balaji Tower,
II Floor, Ramakrishna Road,
Salem – 638 007. ..Appellant in C.M.A.No.860 of 2022

Vs.

1.Prakash
2.Aarnaa
3.G.Nagarajan
4.K.P.Natarajan
5.B.Arumugam
6.E.Kumari

7.New India Assurance Co., Ltd.,
136, M.B.T. Road, Navalpur,

Ranipet

8.Chandrasekaran
9.A.Dhandapani

10.The Oriental Insurance Co.Ltd.,
At 17-A, Krishnagiri Road,
S.K.S. Complex, Ranipet,
North Arcot.

11.The Secretary, Transport Department,
Government of Puducherry
Respondent 11 suo motu impleaded vide
Court order dated 16.02.2023 made in
C.M.A.No.860 of 2022 in CMP.No.6330 of 2022
by RSMJ and KGTJ) ..Respondents in C.M.A.No.860 of 2022

National Insurance Co.Ltd.,
Divisional Office – II, Balaji Tower,
II Floor, Ramakrishna Road,
Salem – 638 007. ..Appellant in C.M.A.No.861 of 2022

Vs.

1.Arumugam
2.Minor.Lochana
3.G.Nagarajan
4.K.P.Natarajan
5.B.Arumugam
6.E.Kumari

7.New India Assurance Co., Ltd.,
136, M.B.T. Road, Navalpur,

Ranipet

8.Chandrasekaran
9.A.Dhandapani

10.The Oriental Insurance Co.Ltd.,
At 17-A, Krishnagiri Road,
S.K.S. Complex, Ranipet,
North Arcot.

11.The Secretary, Transport Department,
Government of Puducherry
Respondent 11 suo motu impleaded vide
Court order dated 16.02.2023 made in
C.M.A.No.861 of 2022 in CMP.No.6332 of 2022
by RSMJ and KGTJ) ..Respondents in C.M.A.No.861 of 2022

National Insurance Co.Ltd.,
Balaji Tower,
II Floor, Ramakrishna Road,
Salem. ..Appellant in C.M.A.No.862 of 2022

Vs.

1.Arumugam
2.Minor.Lochana
3.G.Nagarajan
4.K.P.Natarajan
5.B.Arumugam
6.E.Kumari

7.New India Assurance Co., Ltd.,
136, M.B.T. Road, Navalpur,

Ranipet

8.Chandrasekaran
9.A.Dhandapani

10.The Oriental Insurance Co.Ltd.,
At 17-A, Krishnagiri Road,
S.K.S. Complex, Ranipet,
North Arcot.

11.The Secretary, Transport Department,
Government of Puducherry
Respondent 11 suo motu impleaded vide
Court order dated 16.02.2023 made in
C.M.A.No.862 of 2022 in CMP.No.6335 of 2022
by RSMJ and KGTJ) ..Respondents in C.M.A.No.862 of 2022

National Insurance Co.Ltd.,
751, Anna Salai,
Chennai-2 ..Appellant in C.M.A.No.3270 of 2019

Vs.

1.Uma Maheswari
2.Hari Karthick
3.A.Murugaiyan
4.K.P.Natarajan
5.A.Dhandapani

6.New India Assurance Co., Ltd.,
45, Moore Street, Chennai.

7.E.Kumari

8.Oriental Insurance Co.Ltd.,
At No.135, Prakasam Road,
Broadway, Chennai.

9.The Secretary, Transport Department,
Government of Puducherry
Respondent 9 suo motu impleaded vide
Court order dated 16.02.2023 made in
C.M.A.No.3270 of 2019 in CMP.No.18851 of 2019
by RSMJ and KGTJ) ..Respondents in C.M.A.No.3270 of 2019

Common Prayer for C.M.A.Nos.860 to 862 of 2022: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree dated 06.03.2021 in M.C.O.P.Nos.196, 198, 197 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Udumalpet.

For C.M.A.No.3270 of 2019: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree dated 02.08.2018 in M.C.O.P.No.1568 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Court of Small Causes, Chennai

For C.M.A.Nos.860 to 862 of 2022

For Appellant : Mr.S.Arunkumar

For R4	:	Mr.F.Terry Chella Raja for Mr.T.Ananthasekar
For R7	:	M/s.A.Salomi for Mr.C.Ramesh Babu
For R10	:	Mr.P.Kandasamy
For R3,5,6,8,9	:	Notice Dispense with
For R1 & R2	:	Not ready notice
For R11	:	Ms.Sharada Vivek Additional Government Pleader (P)

For C.M.A.No.3270 of 2019

For Appellant	:	Mr.S.Arunkumar
For R1 to R3	:	Mr.S.Udaya Kumar
For R4	:	Mr.F.Terry Chella Raja for Mr.T.Ananthasekar
For R6	:	M/s.A.Salomi for Mr.C.Ramesh Babu
For R8	:	Mr.P.Kandasamy
For R4,5 & 7	:	Notice Dispense with
For R11	:	Ms.Sharada Vivek Additional Government Pleader (P)

COMMON JUDGMENT

(Judgement of the Court was delivered by **K.GOVINDARAJAN THILAKAVADI,J.**)

The National Insurance Company as insurer of the bus bearing Reg.No.PY-011-BH-9919 has filed this appeal, against the award dated 06.03.2021 and 02.08.2018 passed in M.C.O.P.Nos.196,197& 198 of 2011 and M.C.O.P.No.1568 of 2012 on the file of the Motor Accident Claims Tribunal (Sub Judge) Udumalaipet and on the file of Motor Accident Claims Tribunal (Chief Judge, Court of Small Causes), Chennai.

2.Aggrieved by the findings with regard to the liability and quantum of compensation, the appellant/Insurance Company has preferred these appeals.

3. Brief facts leading to the appeal are as follows:

On 07.06.2011, the deceased was travelling in a bus bearing Registration No.PY-011-BH-9919, driven by the 1st respondent. At that time, a lorry bearing Registration No.TN-23-D-2457 was driven by the 4th respondent and another lorry bearing Registration No.TN-23-AH-1333 was driven by the 7th respondent. While so, when the bus was proceeding in the Chennai to Bangalore National High Way and after crossing Baluchetty Chatram, Avalur Village, at about 11 p.m., the above said two lorries driven by the 4th and 7th respondent were chasing each other in a rash and negligent manner, without giving way to the bus driven by the 1st respondent. At that time, both the lorry drivers, in order to overtake each other, the lorry bearing Registration No.TN-23-AH-1333 dashed behind the lorry bearing Registration No.TN-23-D-2457 driven by the 4th respondent. When the 1st respondent who was also driving the bus in a rash and negligent manner with high speed and dashed against the lorry bearing Registration No.TN-23-AH-1333 and due to the said impact, the bus turned around and hit against the wall and fell down in a 100 ft depth pit which was on the left side of the road. At that time, the AC tank in the bus busted and the entire bus was set ablaze. The deceased and many co-passengers were succumbed to the injuries sustained by them. According to the claimants, the accident had taken place only due to the rash and negligent act of the respondent Nos.1, 4 and 7. Based on the above contentions, the claimants in M.C.O.P.Nos.196, 198, 197 of 2011 & 1568 of 2012 filed the above claim petitions for compensation.

4.The respondents in the above claim petitions, resisted the claim petition on the ground of liability, negligence, quantum and also on the ground that the insured KPN travels has violated the policy condition.

5.Before the Tribunal, P.Ws.1 to 4 were examined on the side of the claimants and Exs.P1 to P34 were marked. On the side of the respondents, R.W.s.1 to 5 were examined and Exs.R1 to R18 were marked.

6.The Tribunal, on evaluation of the pleadings and evidence, in M.C.O.P.Nos. 196, 198, 197 of 2011 found that the accident had occurred due to the fault of the drivers of the vehicle owned by the 2nd and 8th respondents and thereby fastened the liability on the respondents 1 to 3 and 7 to 9 to pay the compensation to the claimants with interest at the rate of 7.5% per annum from the date of claim petition and exonerated the respondents 4 to 6 from their liability.

7.In M.C.O.P.No.1568 of 2012 found that the accident had occurred due to the fault of the driver of the bus owned by the 2nd respondent and thereby fastened the liability on the 1st and 2nd respondents and directed the 1st & 2nd respondents to pay the compensation to the claimants with interest at the rate of 7.5% per annum from the date of claim petition and exonerated the respondents 3 to 6 from their liability.

8.The learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal has come to an erroneous conclusion that the driver of the lorry bearing Registration No.TN-23-D-2457 was not responsible for the accident. It is further submitted that the evidence of P.W.2 clearly established the fact that the drivers of the lorries also contributed to the accident. The tribunal failed to consider that the accident occurred in the National Highway road and there was sufficient space for three vehicles to pass on, but due to the rash and negligent act of raising between the two lorry drivers, the accident has occurred and therefore, the lorry drivers are equally responsible for the accident. It is further submitted that the award against the appellant is unsustainable in view of willful breach committed by the 4th respondent in plying the bus against the permit and has been taken to task by the Government of Tamil Nadu for the offence committed by the insured consequent to W.P.No.15941 of 2011 and therefore the appellant is not liable to pay the compensation. The learned counsel for the appellant has vehemently contended that the insured KPN travels has violated the policy conditions by permitting to drive the vehicle without valid permit. It was contended that the insured obtained "Contract Carriage Permit" from the State Transport Authority, Pondicherry and plied the vehicle in Tamil Nadu as sleeper coach and as "Stage carrier".

9. The vehicle was not given for journey as a whole under a contract as required under Contract Carriage Permit. In fact,Public interest litigation was filed under W.P.No.15941 of 2011 questioning such usage of the vehicle by the insured contrary to the permit and the Transport Department. Tamil Nadu has filed counter stating that permits were not granted to such sleeper coach buses and they operate from neighbouring States. Thereafter an Additional Counter was filed specifically stating that permits to the Omni bus are issued

under Section 74 of Motor Vehicles Act, 1988 and the operators should ply their vehicles only on contract basis. The own damage claim made by the insured was repudiated by the appellant on the ground that the limitation as to the use specified in the policy expressly requires the insured to use the vehicle in accordance to the permit as mentioned under Sec.66 of the MV Act.

10.It is further submitted that the special permit granted to the said vehicles is from Pondicherry to Pondicherry en-routing various places. Admittedly, the vehicle was plied from Chennai to Pollachi, since the passengers purchased these tickets individually at various places and the insured has contracted with each of them collecting separate fares to alight them at Pollachi, Tiruppur and Udumalaipet. The vehicle should have been used as a whole under a contract. Thus, the insured has violated Section 66, Section 74 and Section 88(8) of the Motor Vehicles Act. The policy issued by the appellant is Passenger carrying commercial vehicle policy and it can be enforced by the owner/insured provided he operates the vehicle in accordance to the Motor Vehicles Act, particularly according to the type of permit and terms/conditions mentioned therein. The insured filed Consumer Case No.5 of

2013 before the Hon'ble State Commission, Chennai stating that if there is a violation they are entitled for non-standard settlement i.e., 75% of the claim. Based on this admission in the complaint filed therein the Hon'ble State Commission passed on order dated 22.10.2021 granting the said relief. Aggrieved of the same, the appellant has challenge the said order by way of appeal before the Hon'be National Commission. In any event the insured has admittedly committed willful breach by plying the vehicle contrary to the permit conditions. Hence, he prays that the award passed by the Tribunal is liable to be set aside.

11. The learned counsel appearing for the 10th respondent/Insurance Company would contend that the tribunal on appreciating the facts on record exonerated the 10th respondent from its liability to pay the compensation to the claimants.

12.Heard, counsel for parties and perused the materials available on record.

13.Firstly, it has to be considered whether the insured KPN travels has committed willful breach in plying the bus against the permit. There is no contra evidence that the permit issued to KPN Omni bus was under Section 74 of Motor Vehicles Act 1988 and the operators should ply their vehicles only on contract basis. No doubt, the limitation has to be specified in the policy expressly requiring the insured to use the vehicle in accordance with the permit as mentioned under Section 66 of the Motor Vehicles Act. On perusal of the permit granted to the said vehicle it is seen that the vehicles should ply from Pondicherry to Pondicherry en-route to various places. Admittedly, the vehicle was plied from Chennai to Pollachi, since the passengers purchased the tickets individually at various places and the insured travels has collected separate fares to leave them at Pollachi, Tirupur and Udumalai. Thus, the vehicle was not used as whole under the contract. The above respondent has plied the bus contrary to the provisions under Section 66 and 74 and Section 88 (8) of the Motor Vehicles Act. Thereby, violating of the MV rules and terms of policy. Under Motor Vehicles Act, the following Sections provides as follows:

> *"Sec. 7 "Contract Carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the*

carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorized by him in this behalf on a fixed or an agreed rate or sum-"

a. On a time basis, whether or not with reference to any roads or distance or

b. From one point to another

Sec.40 "Stage Carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

Sec.66 Necessity for permits: (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Autority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used.

Whereas the trip-sheet maintained on the day of accident and submitted by the insured would clearly display the fact that the passengers booked ticket at various places in the State of Tamil Nadu, the insured has picked up the passengers at Chennai and proceeded to drop them at Pollachi, Tiruppur and Udumalaipet, which itself is a separate contract violating the permit conditions and consequently clause 3 (a) of the general exceptions mentioned in the policy issued by the appellant.

14.The Hon'ble Supreme Court in the judgment reported in 2018 (2) TNMAC 28 (SC) Rani and others Vs. National Insurance Co.Ltd., & others has held that liability cannot be fastened on the insurance company when such breach is committed by the insured. The tribunals have failed to consider the legal issues in proper percepts and they have dealt the defense raised by the appellant not in terms of the agreed conditions between the parties to the contract of insurance. On the other hand, they have kept the interest of the third parties in foremost priority and came to an erroneous conclusion that the appellant is liable to indemnify the claim in spite of the breach substantively proved by the appellant herein.

15.Therefore, it is a clear case of violation of permit condition. Hence, the Tribunal ought to have fastened the liability only on the insured KPN travels on the other hand erroneously fastened the liability on the appellant/Insurance Company.

16.On the point of negligence, the learned counsel for the appellant/Insurance Company would contend that the driver of the lorry bearing Registration No.TN-23-D-2457 was also responsible for the accident. For the reason that the two lorry drivers were raising each other in a rash and negligent manner and due to which the accident occurred and therefore, the two lorry drivers are equally liable for the accident and taking into consideration the manner of accident there must be equal apportionment of liability between three vehicles involved in the accident. On perusal of the FIR it reveals that the FIR was registered against the drivers of the three vehicles involved in the accident. The reason attributed by the tribunal for exonerating the driver of the lorry bearing Registration No.TN-23-D-2457 cannot be accepted. There is no contra evidence to establish that the driver of the lorry bearing Registration No.TN-23-D-2457 was not responsible for the accident. The evidence of R.W.2 also supports the contention of the appellant.

Therefore, taking into consideration the manner of accident, this Court thinks fit the reasonable apportionment of liability should be fixed. Admittedly, the place of accident is National Highway road and the lorries were driven in front of the Omni bus. While so, if the driver of the Omni bus had drove the vehicle in a sufficient distance, he could have avoided the said accident. Therefore, a major apportionment of liability should be fixed on the Omni bus.

17. Since the lorry drivers also contributed to the alleged accident, this Court apportioned the liability as here under:

Bus bearing Reg.No. PY-011-BH-9919	50%
Lory bearing Reg.No. TN-23-AH-1333	30%
Lorry bearing Reg.No. TN-23-D-245	20%

18.With regard to quantum of compensation, there is no dispute. In view of aforesaid discussions there can be no scope for doubt to hold that when an accident takes place on account of composite negligence of two or more motor vehicles the claimants are entitled to proceed against all the insured and the insurers of the offending vehicles in accordance to the liabilities apportioned as above. The above Insurance Companies are directed to make the payment of entire amount of compensation within a period of six weeks from the date of receipt of a copy of this order awarded by the Tribunal in accordance to the apportioned liabilities and thereafter realize from the owner of the Omni bus involved in the accident, since there is violation of policy as discussed above.

19.Accordingly, these civil miscellaneous appeals are partly allowed. Consequently, connected miscellaneous petition is closed. No cost.

(D.K.K., J) **(K.G.T., J)**

vsn/gbi 16.06.2023
Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

To

1.The Sub-Judge,
Motor Accidents Claims Tribunal, Sub-Court,
Udumalpet.

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

D.KRISHNAKUMAR,J.

and

K.GOVINDARAJAN THILAKAVADI,J.

gbi

**Pre delivery common judgment made in
C.M.A.Nos.860 to 862 of 2022 and 3270 of 2019
and
C.M.P.Nos.18851 of 2019**

16.06.2023