IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.Nos.2589 to 2592 of 2013
and M.P.Nos.1, 1, 1 & 1 of 2013

Divisional Manager,
M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Nos.45 & 46, Whites Road,
Chennai – 600 014.

...Appellant in all C.M.As

Vs

1.Sakthivel
2.Akila ... Respondents
in C.M.A.No.2589 of 2013

1.Veerapathiran
2.Akila ... Respondents
in C.M.A.No.2590 of 2013

1.Srinivasan
2.Akila ... Respondents
in C.M.A.No.2591 of 2013

1.Selvaraj
2.Akila ... Respondents
in C.M.A.No.2592 of 2013

Prayer in C.M.A.No.2589 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.779 of 2009 dated 22.09.2011, on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai.

Prayer in C.M.A.No.2590 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.132 of 2010 dated 22.09.2011, on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai.

Prayer in C.M.A.No.2591 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.133 of 2010 dated 22.09.2011, on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai.

Prayer in C.M.A.No.2592 of 2013: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in MCOP.No.342 of 2010 dated 22.09.2011, on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai.

For all C.M.As.

For Appellant	: Mr.M.B.Raghavan
For R1	: Mr.B.Jawahar
For R2	: No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree made in MCOP.Nos.779 of 2009, 132, 133 and 342 of 2010 dated 22.09.2011, on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai.

2.The 1st respondent in all C.M.As/claimants filed M.C.O.P.Nos.779 of 2009 & 132, 133 and 342 of 2010 respectively on the file of the Motor Accidents Claim Tribunal, Additional Subordinate Court, Thiruvannamalai, claiming a sum of Rs.3,00,000/-, Rs.5,00,000/-, Rs.5,00,000/- and Rs.2,00,000/- respectively as compensation for the injury sustained by them in the accident that took place on 27.09.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.89,000/-, Rs.99,000/-, Rs.2,15,300/- and Rs.92,400/- along with interest at the rate of 7.5% as compensation to the 1st respondent in all C.M.As/claimants respectively.

4.Aggrieved over the award passed by the Tribunal, the appellant/Insurance Company filed the present appeal challenging the liability fastened against them.

5.Learned counsel appearing for the appellant/Insurance Company would submit that the sitting capacity of the vehicle (Tempo) involved in the accident was only two excluding the driver. However, in the present case four persons travelled along with their goods in the vehicle since they are the owner of the goods. The Insurance policy was issued only for two passengers to travel along with their goods excluding driver and therefore, the appellant is liable to pay compensation only for two passengers.

6.He would further submit that the owner of the vehicle ought to have permitted only two passengers to travel along with driver. Since more than two persons travelled beyond the insurance limit the liability cannot be fastened against the appellant for more than two passengers and the appellant need not pay any amount for more than two passengers. Therefore, he would fairly submit that the highest amount which was awarded in M.C.O.P.Nos.132 & 133 of 2010 may be confirmed and the liability fastened against the appellant for the other two passenger in M.C.O.P.Nos.779 of 2009 & 342 of 2010, which is lesser compensation may be set aside since they are not even covered under Section 147 r/w 58 of the Motor Vehicles Act, 1988.

7.Per contra, learned counsel appearing for the 1st respondents/claimants would submit that in terms of Section 236 of the Tamil Nadu Motor Vehicles Rules, 1989, six persons can travel in the goods carriage and even as per Section 238 of the Tamil Nadu Motor Vehciles Rules, 1989, a person can travel in a sitting position at a height not exceeding 300 centimetres from the surface upon which the vehicle rests. Therefore, in accordance with the provisions of

Tamil Nadu Motor Vehicles Rules, 1989, all the four passengers travelled in the vehicle are entitled to claim compensation.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

9.Upon hearing, it is clear that the vehicle involved in the accident was a tempo traveller, in which only two passengers can travel in the cabin and for the said reason only the Insurance Policy was taken only for two passengers apart from the driver. The appellant also issued insurance policy only for two persons. When that being so, certainly the Insurance Company is liable to pay the compensation only to the extent of the insurance coverage and the liability cannot be fastened against the appellant/Insurance Company in the absence of insurance coverage.

10.Now, the learned counsel appearing for the 1st respondents/claimants made a submission that atleast pay and recovery may be ordered. Here again the question arises for consideration is that without any insurance policy being issued to more than two persons to travel in the cabin or in the body of the vehicle involved in the accident whether pay and recovery can be ordered?

11.For better appreciation, Rules 236 and 238 of the Tamil Nadu Motor Vehicles Rules, 1989, is extracted hereunder:

> “236. Limit of persons in goods carriage.— 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 centimetrs 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
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> 237..........
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> 238. Prohibition of persons on the top of goods carriage.— No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such

a manlier that any part of his person when he is in a sitting position, is at a height exceeding 300 centimetres from the surface upon which the vehicle rests."

12.A reading of Rules 236 and 238 of the Tamil Nadu Motor Vehicles Rules, 1989, shows that six persons can travel in a goods carriage and the passengers can travel along with their goods in the top of the goods without exceeding 300 centimeters from the surface upon which the vehicle rests. When the policy was issued for more than two persons, no doubt the insurance company cannot cite the reason regarding the sitting capacity of the vehicle. However, in the present case, since there is no policy coverage for more than two passengers, this Court is not in a position to order pay and recovery. In the event if policy coverage available for four persons even if the passenger violated the provisions under Rule 238 of the Tamil Nadu Motor Vehicles Rules, 1989 and travelled above the 300 centimetres limit, this Court can order pay and recovery. But in the present case since owner of the vehicle has not insured for more than two passengers, the appellant/Insurance Company cannot be ordered to pay the compensation and recover the same from the owner of the vehicle.

13.Hence, this Court is of the view that the Tribunal has erred in fastening the liability against the appellant/Insurance Company for all the four passengers when there is insurance coverage only for two passengers, which needs interference since the liability cannot be fastened beyond the policy coverage and the appellant cannot be directed to pay the compensation beyond two passengers, including pay and recovery.

14.In view of the above, the liability fastened against the insurance company in M.C.O.P.Nos.779 of 2009 and 342 of 2010 is set aside and the 1st respondents in C.M.A.No.2589 & 2592 of 2013 is permitted to recover the compensation awarded by the Tribunal from the owner of the vehicle/the 2nd respondent herein. Since, there is no dispute in the insurance coverage for two passengers and the considering the submission made by the learned counsel appearing for the appellant, the compensation awarded by the Tribunal in M.C.O.P.Nos.132 & 133 of 2013 stands confirmed.

15.In the result, C.M.A.Nos.2589 & 2592 of 2013 is disposed of. The 2nd respondent/owner of the vehicle is hereby directed to deposit the compensation awarded by the Tribunal at Rs.89,000/- and Rs.92,400/- respectively with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondents/claimants are permitted to withdraw the entire amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the award amount to the 1st respondents/claimants by way of RTGS to their bank account directly, within a period of three weeks from the deposit or application made by the 1st respondents/claimants for withdrawal, whichever is earlier. Further, in the event, if the appellant/Insurance Company has deposited any amount, they are permitted to withdraw the deposited amount.

16.C.M.A.Nos.2590 & 2591 of 2013 are dismissed and award of the Tribunal is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and cost, less the amount, already deposited if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit the 1st respondents/claimants are permitted to withdraw the entire amount awarded by the Tribunal along with interest and cost, less the amount if any, already withdrawn. No costs. Consequently, the Civil Miscellaneous Petition is closed.

05.07.2023

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

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To:

The Additional Subordinate Court,
Thiruvannamalai.

KRISHNAN RAMASAMY,J.

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C.M.A.Nos.2589 to 2592 of 2013

05.07.2023