IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. Nos.1365 and 1366 and of 2018 and
C.M.A. No.672 of 2020

In C.M.A. No.1365 of 2018

Shriram General Insurance Co. Ltd.
10003-E8, IFFCO Industrial Area, Sitapura,
Jaipur, Rajasthan – 302 022 ... Appellant

Vs.

1. Ammavasai
2. K.Madheswaran
3. The Branch Manager
   United India Insurance Co. Ltd.,
   Branch Manager Office, 74/42,
   Sathya Medical Complex 1st Floor,
   Opp. Sared Heart College,
   Tirupattur, Vellore District ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 31.10.2017 made in M.C.O.P. No.1549 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : Mr.P.Dineshkumar for
M/s.Mukund R.Pandiyan for R1
R2- No Appearance
Mr.S.Arun Kumar for R3

In C.M.A. No.1366 of 2018

Shriram General Insurance Co. Ltd.
10003-E8, IFFCO Industrial Area, Sitapura,
Jaipur, Rajasthan – 302 022 ... Appellant

Vs.

1. Kannaiyan
2. K.Madheswaran
3. The Branch Manager
   United India Insurance Co. Ltd.,
   Branch Manager Office, 74/42,
   Sathya Medical Complex 1st Floor,
   Opp. Sared Heart College,
   Tirupattur, Vellore District ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 31.10.2017 made in M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : Mr.P.Dineshkumar for
M/s.Mukund R.Pandiyan for R1
R2- No Appearance
Mr.S.Arun Kumar for R3

In C.M.A. No.672 of 2020

Branch Manager
Shriram General Insurance Company Limited
10003, E8, RIICO Industrial Area, Sitapuram,
Jaipur, Rajasthan – 302 022 ... Appellant

Vs.

1. Raja Manickam
2. Nawab
3. K.Madheswaran ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 24.08.2018 made in M.C.O.P. No.734 of 2010 on the file of Motor Accident Claims Tribunal (Additional District and Sessions Court), Krishnagiri.

For Appellant : Mr.S.Dhakshinamoorthy
For Respondents : No Appearance

COMMON JUDGMENT

The Civil Miscellaneous Appeals in CMA Nos.1365 and 1366 of 2018 are filed to set aside the decree and judgment dated 31.10.2017 made in M.C.O.P. No.1549 of 2013 and M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri.

2. The Civil Miscellaneous Appeal in CMA No.672 of 2020 is filed to set aside the decree and judgment dated 24.08.2018 made in M.C.O.P. No.734 of 2010 on the file of Motor Accident Claims Tribunal (Additional District and Sessions Court), Krishnagiri.

3. In CMA Nos.1365 and 1366 of 2018, both the appellant and the 3rd respondent are the insurer of TATA Ace vehicle. The first respondent is the claimant and the 2nd respondent is the owner of the TATA Ace vehicle.

4. In CMA No.672 of 2020, the appellant is one of the insurer of the TATA Ace vehicle namely Shriram General Insurance Co. Ltd. The 1st respondent is the claimant, the 2nd respondent is the driver of the TATA Ace vehicle and the 3rd respondent is the owner of the TATA Ace vehicle.

5. The case of the claimants in the all the three appeals is that on 12.01.2010 at about 22.30 hours (10.30 p.m.), the claimants Ammavasai, Kannaiyan and Rajamanickam were travelling in the TATA Ace vehicle bearing Regn. No. TN-24-B-6266, from Maganoorpatti to Vellore, to deliver Brinjals and the said vehicle was driven by one Navab. Near Udayarpalayam NH 46 in Ambur to Vellore Road, the said Navab drove the vehile in a rash and negligent manner and due to the over speed, he lost control and dashed on a mud heep. Due to the impact, the left rear tyre got burst and the vehicle capsized as a result, all the three claims sustained injuries. Immediately, they were taken to Government Hospital at Ambur and thereafter, shifted to bone setting hospital at Tirupattur.

6. The injured namely Ammavasai and Kannaiyan had filed claim petitions in M.C.O.P. No.1549 of 2013 and M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri claiming compensation of Rs.50,000/- and Rs.5,00,000/- respectively, against the owner and Insurance Companies, stating that they were working as loading and unloading coolies and agriculturists and were earning Rs.3,300/- each per month and due to the accident, they are unable to do work as before the accident. The Tribunal, after enquiry, awarded compensation of Rs.25,000/- to the claimant Ammavasai in M.C.O.P. No.1549 of 2013 and awarded compensation of Rs.1,45,200/- to the claimant Kannaiyan in M.C.O.P. No.1629 of 2013 by common Award dated 31.10.2017 with cost and interest at 9% from the date of filing to till the date of deposit and directed the 3rd respondent Insurance company/appellant herein to pay the compensation to the claimant and then to recover the same from the 1st respondent/2nd respondent herein who is the owner of the offending vehicle.

7. The yet another injured namely Rajamanickam, had filed claim petition in M.C.O.P. No.734 of 2010 on the file of Motor Accident Claims

Tribunal (Additional District and Sessions Court), Krishnagiri, claiming compensation of Rs.3,00,000/- against the driver, owner and insurer of the offending vehicle, stating that due to the accident, he suffered multiple injuries and fractures on the left hand wrist and also on the shoulder and thereby, he was not in a position to do any work as before the accident. The Tribunal, after enquiry, by judgment dated 24.08.2018, dismissed the petition as against the 1st respondent therein who is the driver of the vehicle and awarded compensation of Rs.51,000/- with cost and interest at 7.5% from the date of filing of the claim petition till the date of deposit. The Tribunal fixed the liability on the 2nd and 3rd respondents there in who are the owner and insurer of the offending vehicle and directed the 3rd respondent Insurance Company to pay the compensation to the claimant.

8. Aggrieved by the Awards passed by the Tribunal, the Insurance Company has filed the present appeals questioning the liability.

9. The learned counsel for the appellant/Shriram General Insurance Company submitted that the offending vehicle namely TATA Ace was not only insured with the appellant/Insurance Company but also insured

with the United India Insurance Company Limited. As per the insurance policy, if any vehicle is insured with more than one Insurance Companies, then all the Insurance Companies in which the vehicle is insured, have to equally divide and pay the compensation. Though there are three claim petitions, only in two claim petitions i.e. M.C.O.P. No.1549 of 2013 and M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri, the other insurer namely United India Insurance Company was impleaded as a party/respondent 3 and in the claim petition in M.C.O.P. No.734 of 2010, the United India Insurance Company was not impleaded as a party. However, if a vehicle has got two insurance policies and both the policies were in force at the time of accident, then both the Insurance Companies have to equally pay the compensation, whereas, the Tribunal has failed to pass such an order and directed the appellant/Insurance Company to pay the entire compensation to the claimants at the first instance and then to recover the same from the owner of the vehicle in M.C.O.P. No.1549 of 2013 and M.C.O.P. No.1629 of 2013. Further, the prevailing rate of interest is 7.5%, whereas the Tribunal, has awarded 9% interest in the above two claim petitions which warrants interference.

9(a). The learned counsel for the appellant/Shriram General Insurance Company further submitted that in M.C.O.P. No.734 of 2010, the Tribunal, has just directed the appellant/Insurance Company to pay the entire compensation to the claimant and not given liberty to recover the same from the owner of the vehicle. The learned counsel further submitted that in the TATA Ace vehicle, the seating capacity is only one in addition to the driver and therefore, only one person can accompany along with goods, whereas, in this case, three persons have accompanied. He placed reliance of the judgment of the Honble Supreme Court in the case of ***United India Insurance Co. Ltd. Vs Suresh K.K. and Ors. reported in MANU/SC/7560/2008*** and stated that if any person traveled in an insured vehicle in a capacity other than the owner of the goods, the Insurance Company is not liable to compensate them. Though all the three persons have filed claim petitions, the Insurance Company is liable to pay only one person. Therefore, the Awards passed by the Tribunal are liable to be set aside.

10. The learned counsel appearing for the United India Insurance Company/3rd respondent in CMA Nos.1365 and 1366 of 2018 conceded the liability and by sailing with the submission of the learned counsel for the

appellant submitted that if any person traveled in a capacity other than the owner or agent of the goods, the Insurance Company is not liable to compensate them.

11. Heard and perused the materials available on record.

12. The accident is admitted. The manner of the accident and the insurance policy is not in dispute. Admittedly, the offending vehicle was insured with both the Shriram General Insurance Company and United India Insurance. Therefore, they both are equally liable to pay the compensation to the claimants.

13. As far as payment of compensation is concerned, admittedly, there is no dispute that if any persons traveled more than the seating capacity, the Insurance Company is not liable to pay any compensation to them. However, the insurance contract is between the insured and the insurer. As per the insurance contract, the Insurance Company is liable to pay upto the seating capacity. Though the Tribunal has passed Awards for three claimants, the Insurance Company is liable to pay only one Award. As per the decision

of the Honble Supreme Court in the case of ***United India Insurance Co. Ltd. Vs Suresh K.K. and Ors.*** *reported* ***in MANU/SC/7560/2008,*** if any person traveled in an insured vehicle in a capacity other than the owner of the goods, the insurer would not be liable to compensate them. However, since three Awards have been passed by the Tribunal, and the offending vehicle is insured with two Insurance Companies, the maximum of the award amount has to be paid by both the Insurance Companies equally.

14. In this case, out of the three awards passed by the Tribunal, the Award in M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri, for Rs.1,45,200/- is the highest amount.

15. Therefore, the Insurance Companies namely Shriram General Insurance Company and the United India Insurance Company in which the offending vehicle was insured at the time of accident, are directed to equally divide and deposit the said Award amount of Rs.1,45,200/- passed by the Tribunal in M.C.O.P. No.1629 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri, with cost and interest as awarded

by the Tribunal within a period of six weeks from the date of receipt of copy of this order. On such deposit, all the three claimants in M.C.O.P. No.1549 of 2013 and M.C.O.P. No.1629 of 2013 and M.C.O.P. No.734 of 2010 are directed to proportionately share the Award amount of Rs.1,45,200/-.

16. The owner of the offending vehicle is liable to pay the remaining Award amounts of Rs.25,000/- and Rs.51,000/- passed by the Tribunal in M.C.O.P. No.1549 of 2013 on the file of Motor Accident claims Tribunal (Special Sub Judge), Krishnagiri and in M.C.O.P. No.734 of 2010 on the file of Motor Accident Claims Tribunal (Additional District and Sessions Court), Krishnagiri, to the claimants. Accordingly, the owner of the vehicle is directed to deposit the said Award amounts of Rs.25,000/- and Rs.51,000/- within a period of eight weeks from the date of receipt of copy of this order, before the Tribunal. On such deposit, all the above said claimants are directed to proportionately share the Award amount.

17. The appellant/Insurance Company is permitted to withdraw the excess amount if any deposited by them, except the 50% amount on Rs.1,45,200/- as fixed by this Court.

18. With the above observations and modifications, the Civil Miscellaneous Appeal in C.M.A. No.1366 of 2018 is partly allowed. The Civil Miscellaneous Appeals in C.M.A. No.1365 of 2018 and C.M.A. No.672 of 2020 are allowed. There shall be no order as to the costs.

29.09.2023

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Index : Yes / No
Speaking Order : Yes / No

To

1.The Motor Accident claims Tribunal
(Special Sub Judge), Krishnagiri.

2. Motor Accident Claims Tribunal
(Additional District and Sessions Court), Krishnagiri.

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

P.VELMURUGAN. J.

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C.M.A. Nos.1365 and 1366 and of 2018 and
C.M.A. No.672 of 2020

29.09.2023