IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1615 of 2018 and
CMP No.12854 of 2018

The Divisional Manager
M/s.United India Insurance Co. Ltd.
Pondicherry ... Appellant

Vs.

1. Tmt.Meenambigai
2. K.L.Ramkumar ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree in MCOP No.996 of 2007, dated 25.02.2014, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Presiding Officer, Puducherry.

For Appellant : Mr.E.Rajadurai for Mr.M.B.Goapalan

For Respondents : M/s.Ramya V.Rao for R1
R2-Notice dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award and decree passed in M.A.C.T.O.P. No.996 of 2007 dated 25.02.2014, on the file of the Principal Sub Court (Presiding Officer), Motor Accidents Claims Tribunal, Puducherry.

2. The appellant is the Insurance Company. The 1st respondent is the Claimant and the 2nd respondent is the owner of the offending Vehicle.

3. The case of the claimant/1st respondent is that on 06.10.2006 at about 2.30 p.m., when the claimant/1st respondent was travelling as one of the passengers along with her husband in the 2nd respondent's vehicle namely share auto bearing Regn. No.TN-31-D-6676 from Kirumampakkam to Cuddalore, due to rash and negligent driving of the driver of the 2nd respondent's vehicle, the vehicle dashed against a tree opposite to Vels Restaurant Near Mahathma Gandhi Medical College. As a result, the passengers sustained injuries. The claimant/1st respondent sustained fracture over spinal card, head, right leg, hip with laceration and abrasion all over the body. Immediately, after the accident, she was taken to Mahathma Gandhi

Medical College and to G.H. Puducherry for treatment. Due to the accident, she is unable to do any work as she did before.

4. Therefore, the claimant had filed a claim petition before the Tribunal claiming compensation of Rs.5,00,000/- for the injuries sustained by her. The appellant/Insurance Company was arrayed as 2nd respondent and the 2nd respondent herein was arrayed as 1st respondent before the Tribunal.

5. In order to substantiate the case of the claimant before the Tribunal, on the side of claimant, two witnesses were examined as P.W.1 and P.W.2 and 8 documents were marked as Ex.P.1 to Ex.P.8. On the side of the respondents, no oral or documentary evidence was let in.

6. The Tribunal dismissed the petition as against the 1st respondent/2nd respondent herein who is the owner of the offending vehicle and after hearing the arguments on the side of claimant and the appellant herein/Insurance Company, considering the oral and documentary evidence, the Tribunal allowed the claim petition filed by the claimant/1st respondent by fixing the liability on the appellant/Insurance Company by awarding a sum of

Rs.59,000/- from the date of claim petition and till the date of deposit with interest at 7.5%. Challenging the award passed by the Tribunal, the Insurance Company has filed the present appeal.

7. The learned counsel for the appellant/Insurance Company submitted that at the time of accident, the offending vehicle was carrying 16 persons. But the permitted seating capacity in the offending vehicle is only 6. Since the offending vehicle was carrying more than 6 persons at the time of accident, the appellant/Insurance Company is not liable to pay compensation for more than 6 persons. There were totally 12 passengers who had filed claim petitions before Tribunal, out of which, 6 of them were allowed and the appellant/Insurance Company had also deposited the award amount and for the rest of the claimants, the appellant/Insurance Company is not liable to pay any compensation. Even as per the ratio of the Hon'ble Apex Court, the Insurance Company is liable to pay only for permissible seating capacity of the vehicle and therefore, if any claim is made more than the permissible seating capacity, the same need not be ordered. In this case, already 6 persons had filed claim petitions and they have also got the claim amount. Since the claimant/1st respondent herein comes beyond the seating capacity, the

appellant/Insurance Company is not liable to pay any compensation or otherwise, the appellant/Insurance Company may be permitted to pay and recover the amount from the owner of the offending vehicle/2nd respondent herein.

8. The learned counsel for the 1st respondent/claimant submitted that the accident is admitted. Liability is admitted and the insurance policy is also admitted. The only stand taken by the appellant/Insurance Company is that there is violation of the policy condition. However, the appellant/Insurance Company paid compensation to 6 of the claimants. Therefore, the same has to be ordered to the claimant herein also. The Tribunal rightly appreciated the entire evidence and awarded the compensation. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the 1st respondent/claimant and perused the entire materials.

10. The accident is not in dispute. The manner of accident is also not in dispute. The claimant was travelling in the offending vehicle at the time of accident which is also not in dispute. The only dispute according to the appellant/Insurance Company is that, the permissible seating capacity of the offending vehicle is only 6, whereas, at the time of accident, the offending vehicle was carrying 16 persons, which is beyond the permissible seating capacity. Therefore, there is violation of policy condition. Further, since the appellant/Insurance Company has already paid the claim amount to 6 claimants as per the permissible seating capacity, they are not liable to pay compensation to the other claimants and that they seek order of pay and recovery.

11. A careful perusal of the records shows that nowhere before the Tribunal the appellant/Insurance Company has stated that 16 persons travelled in the offending vehicle at the time of accident and since they had already paid the claim of compensation to 6 the of claimants, they need not pay to the other claimants. Therefore, without any material particulars, we cannot expect the Tribunal to consider the same. The learned counsel for the appellant/Insurance Company fairly admitted that these facts were not brought to the knowledge of the Tribunal.

12. The learned counsel for the appellant/Insurance admitted the accident and they have also paid the award of compensation to 6 passengers who travelled in the offending vehicle at the time of accident. Hence, the same has to be done to the other passengers also. Since the appellant has not taken any stand of pay and recovery for those 6 claimants and the same was also was not brought before the knowledge of the Tribunal, this Court finds that there is no merit in the appeal and the appeal is liable to be dismissed.

13. Accordingly, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

04.08.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To
1.The Principal Sub Judge, Presiding Officer,
Motor Accidents Claims Tribunal, Pondicherry.

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

P.VELMURUGAN. J.

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C.M.A. No.1615 of 2018

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