IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2681 to 2696 of 2014
and M.P.No.1 of 2014 (16 Nos.)

M/s. United India Insurance Company Limited,
Third Party Cell,
Gandhi Road,
Kancheepuram.

.. Appellant in CMA. No.2681 of 2014

versus

1. Miss.Komathi
2. Thiru. Mustappa

.... Respondents in CMA. No.2681 of 2014

PRAYER in CMA.No.2681 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 to set aside the decree and judgment passed in M.C.O.P.No.49 of 2010 dated 29.06.2012 (Chief Judicial Magistrate) at Chengalpattu – District.

For Appellant	:	Mr.J.Chandran (for all the cases)
For Respondents	:	No appearance (for all the cases)

COMMON JUDGMENT

The Insurance Company have come forward with these appeals seeking to quash the decree and judgment passed the Tribunal dated 29.06.2012 (Chief Judicial Magistrate) at Chengalpattu District.

2. It is the case of the appellant Insurance company that the first respondent in all the cases were travelling in a Mahendra Van bearing Registration No.TN 37 Z 5677, which was owned by the second respondent and insured with the appellant/insurance company herein to Parjian Pharmacy, when the van was proceeding near Gokulapuram, the driver of the van driven the vehicle in a rash and negligent manner. As a result, an accident had happened, due to which, the occupants of the van were sustained injuries. Thereafter, the injured persons/first respondent herein have filed separate claim petitions before the Tribunal claiming compensation.

3. In order to prove the claim before the Tribunal, both sides have marked evidences and examined the witnesses. After analyzing the evidences, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the Van. The Tribunal, vide its order dated 23.06.2012, dismissed two claim petitions and allowed 17 petitions and awarded compensation in respect of 17 passengers, who are the first respondent herein in all the appeals. Challenging the said Judgment, the Insurance Company have filed a

batch of appeals before this Court to quash the same.

4. The learned counsel for the appellant Insurance Company submitted that the compensation awarded by the Tribunal in all the cases are highly excessive, exorbitant and unsustainable. The learned counsel for the appellant/insurance company submitted that as per Ex.R1/Insurance Policy, the seating capacity of the van is only 12. At the time of accident, more than 26 persons were travelling in the said vehicle, which itself shows that there is a policy violation as per the MV Act, due to which, an accident had happened, out of 26 persons, 19 passengers suffered injuries. The said 19 persons have filed separate claim petitions before the Tribunal, in which, two claim petitions were dismissed by the Tribunal and awarded compensation to 17 claim petitions. Out of 17 cases, the Tribunal allowed four petitions and awarded compensation to the claimants by directing the insurance company to pay compensation to them and recover it from the owner of the van. In other cases, the Tribunal has directed the Insurance Company to pay the compensation for the remaining persons, which is not sustainable one. The second respondent, who is the owner of the vehicle, allowed more passengers to travel in the van contrary to the policy

conditions and therefore, the second respondent is liable to pay the compensation to the victim.

In support of his contention, the learned counsel relied on the judgment passed by the Hon'ble Supreme Court in ***2007 ACJ 2129 (National Insurance Company Pvt. Ltd., Vs. Anjana Shyam and others).*** Therefore, the award passed against the Insurance company is liable to quashed and the Insurance company is not liable to pay the compensation.

5. Heard the learned counsel for the appellants. Though notice has been served on the respondents, none appeared on their behalf. Hence, the name of the first respondent in all the appeals have printed in the cause list. Considering the pendency of the appeal for a longer period, this Court is inclined to dispose the cases based on the available records.

6. The facts of the cases are not in dispute. Admittedly, the second respondent is the driver cum owner of the vehicle, which was insured with the appellant herein. On 21.05.2013, when the second respondent was driving the van along with 26 passengers towards Gokulapuram to

Kondamangalam Road, the said van was capsized due to rash and negligent driving. Contrary to the policy conditions, the second respondent was driven the van in a rash and negligent manner and caused accident, in which, 19 passengers were sustained injuries. The said 19 persons filed claim petitions before the tribunal. After adjudication, the Tribunal awarded compensation in respect of 17 passengers and rejected two claims petitions. According to the appellant, the Tribunal has not appreciated the aforesaid issue properly, awarded compensation to 17 persons, who had travelled in the van, which requires reconsideration. Further, learned counsel for the appellant strongly objected to the Tribunal fixing liability on them and awarding compensation by adopting "pay and recover" method.

7. The only issue that arises for consideration is as to the extent of liability of the insurance company to indemnify the owner of the vehicle, more particularly, with regard to the carrying capacity of the vehicle.

8. Admittedly, as per the policy conditions, the seating capacity of the van is only 12 persons. But, the second respondent had allowed to travel 26 passengers in the said Van. Due to the rash driving of the driver

cum owner, the van was capsized and the accident had happened, for which, 19 passengers sustained injuries and all the injured have filed claim petitions, out of which, two petitions were dismissed by the Tribunal and 11 claim petitions were allowed. Out of which, in MCOP.Nos.58,53,54,55,61 to 67 and 76 of 2010, the Tribunal directed the insurance company to pay compensation to the claimants on behalf of the second respondent. In MCOP.Nos.49,52,60 and 59 of 2010, the Tribunal awarded pay and recovery method and the Tribunal dismissed two petitions viz., MCOP. Nos.56 and 57 of 2010.

9. This Court is of the view that admittedly, the vehicle was insured only with the appellant Insurance Company. The Tribunal has clearly found that the accident had happened due to negligent driving of the driver of the van and the Tribunal has rightly adopted the principle of Pay and recover, which need not any interference. Further, it is clearly seen that there is violation of the Policy conditions. As per the condition, the maximum limit to travel a van is only 12 persons and the second respondent has allowed 26 persons to travel in the said van. Therefore, only 12 persons are entitled to claim compensation from the insurance company. The Insurance Company is directed to pay the compensation

to the claimants in MCOP.Nos.58, 53,54,55,61 to 67 and 76 of 2010 (12 claimants) on behalf of the second respondent. Further the Insurance Company is directed to pay compensation to the claimants in MCOP.Nos.49, 52, 60 and 59 of 2010 and recover it from the second respondent.

10. Further, particularly on perusal of the award in MCOP. No.76/2010, which reveals that the age of the claimant is about 27 years at the time of the accident and he was working as an Operator in a private pharmacy and he was earning a sum of Rs.4,000/- per month towards salary. Though the salary certificate has been marked before the Tribunal, the Tribunal has applied "17" multiplier and awarded compensation. However, the first respondent in the said claim petition has not established before the Tribunal that he has suffered functional disability, due to which, he was not able to perform his duty. Without considering the same, the Tribunal has awarded higher compensation at Rs.2,85,000/- (Rs.4000 X 35% X 17 X 12) in respect of loss of earning power. The multiplier method awarded by the Tribunal is liable to be interfered with. Accordingly, the same is quashed. Hence, the compensation awarded by the Tribunal is modified as follows:

Heads	*Amount awarded by the Tribunal (Rs.)*	*Modified award amount (Rs.)*
Transportation	10,000/-	10,000/-
Extra Nourishment	5,400/-	5,400/-
Attendar Charges	3,000/-	3,000/-
Medical Exp.	34,000/-	34,000/-
Pain and sufferings	25,000/-	25,000/-
Loss of Amenities	5,000/-	5,000/-
Loss of Earning power	2,85,000/-	1,40,000/- (Rs.4,000/-X35%)
Total	**3,68,000/-**	**2,22,400/-**

11. In the result, CMA.No.2696 of 2019 is disposed of. The compensation amount is reduced from Rs.3,68,000/- to Rs.2,22,400/- (Rupees Two lakhs twenty two thousand and four hundred only). The Insurance company shall deposit the compensation with 12% interest within a period of eight weeks from the date of receipt of a copy of this order.

12. All the other civil miscellaneous appeals are dismissed. The amount awarded by the Tribunal is confirmed and interest awarded by the Tribunal at the rate of 7.5% is also confirmed except the claimant in CMA. No.2696 of 2019. The Insurance Company shall deposit the compensation to the claimants in MCOP.Nos.58, 53,54,55 and 61 to 67

of 2010 (11 claimants) on behalf of the second respondent within a period of four weeks from the date of receipt of a copy of this order. Further the Insurance Company shall deposit the compensation to the claimants in MCOP.Nos.49, 52,60 and 59 of 2010 (4 claimants) within a period of four weeks from the date of receipt of a copy of this order and thereafter, recover it from the second respondent. On such deposit, the claimants are entitled to withdraw the same. No costs. Consequently, connected miscellaneous petitions are closed.

06.10.2023

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To

The Chief Judicial Magistrate, Chengalpattu District.

M.DHANDAPANI.,J.

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DATED :06.10.2023