IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.4401 of 2019
and
CMP.No.25460 of 2019

M/s. United India Insurance Company Ltd.,
T.P.Claims Cell
No.37, Anna Salai
Chennai – 600 002. ...Appellant

Vs.

1.Murugan
2.R.Mohandoss ..Respondents
(R2 set ex parte in the lower court)

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.120 of 2006 dated 20.01.2009 on the file of Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.IV) Ponneri.

For Appellant : Mr.C.Paranthaman

For Respondents : No appearance for R1 & R2

JUDGMENT

This appeal has been filed by the appellant/Insurance Company to set aside the impugned award dated 20.01.2009 passed by the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.IV) Ponneri, in MCOP.No.120 of 2006.

2. The case of the claimant is that on 09.01.2006 at 08.30 a.m., the claimant along with others were travelling in a Mahendra Champion auto bearing Regn.No.TN-05-M-1405 belonging to the second respondent and insured with the appellant/Insurance Company. According to the claimant, he was proceeding towards Chozhavaram from Kannigaipair Village and when the auto was nearing Manjankaranai Village, the driver of the auto drove the vehicle rashly and negligently, as a result of which, the auto fell in to a pit near the road and the claimant sustained injuries all over the body. According to the claimant, the rash and negligent driving of the driver of the auto belonging to the second respondent was the cause of the accident and that since the said auto was insured with the appellant/Insurance Company, the owner of the auto and the insurer are liable to pay compensation jointly

and severally.

3. The second respondent/owner of the auto remained absent before the Tribunal and therefore, he was set ex parte. The appellant/Insurance Company, contested the claim petition on all the grounds available to the insured. The learned Additional District Judge, Fast Track Court No.IV, Ponneri, while awarding compensation of Rs.59,500/- together with interest at the rate of 7.5% per annum to the claimant concluded that the appellant/Insurance Company is solely liable to pay the compensation on behalf of the first respondent. Aggrieved over the said order passed by the Tribunal, the appellant has filed the present appeal.

4. The learned counsel for the appellant has contended that though the seating capacity of the auto is 2 + 1 (including driver), nearly 4 persons travelled in the vehicle and therefore, the Tribunal was wrong in fastening the liability on the appellant to pay the compensation.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. No appearance on behalf of the respondents 1 and 2.

7. In the decision of ***Royal Sundaram Alliance General Insurance Company Limited Vs.P. Ayyakannu and another*** reported in ***2009 (5) MLJ 707,*** it has been held that the expression "any passenger" found in Section 147 (1) (b) (ii) of the Motor Vehicles Act, 1988 must be understood as passenger authorised to be carried in the vehicle and "use of the vehicle" as permitted use of the vehicle. It is further held that affording of insurance for more number of passengers than permitted would be illegal and that as per Rule 236 of Motor Vehicles Rules, no person shall be carried in the cabin of a goods carriage beyond the number for which there is a seating accommodation. In the instant case, the Registration Certificate of the vehicle shows that the number of persons who can be accommodated in the vehicle is 3. Therefore, the Tribunal was wrong in directing the appellant to pay compensation to the claimant. Therefore, this claimant is entitled to get compensation from the owner of the vehicle/second respondent with interest at the rate of 7.5% per annum. The appellant/Insurance Company is

exonerated from paying the compensation amount. The appellant/Insurance Company is also at liberty to withdraw the amount already deposited by them in the aforesaid claim petition.

8. In the result,

(i) This Civil Miscellaneous Appeal is **allowed.** No costs. Consequently, the connected miscellaneous petition is closed.

(ii) The second respondent/owner of the vehicle is directed to pay the compensation of Rs.59,500/- (Rupees Fifty Nine Thousand and Five Hundred only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.120 of 2006 on the file of the Motor Accident Claims Tribunal/Additional District Court, Fast Track Court No.IV, Ponneri, within a period of four weeks from the date of receipt of a copy of this order.

(iii) The appellant/Insurance Company is exonerated from paying the compensation amount to the claimant. The order passed by the Tribunal in MCOP.No.120 of 2006 on the file of the Motor Accident Claims Tribunal/Additional District Court, Fast Track Court No.IV, Ponneri, is modified accordingly.

(iv) The appellant / Insurance Company is at liberty to withdraw the amount deposited by them to the credit of MCOP.No.120 of 2006 on the file of the Motor Accidents Claims Tribunal/Additional District Court, Fast Track Court No.IV, Ponneri.

Index : Yes/No **09.02.2023**
Internet : Yes/No
gv

To

1.The Motor Accident Claims Tribunal/
(Additional District Judge) (Fast Track Court No.IV) Ponneri.

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

A.A.NAKKIRAN.,J.
gv

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