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C.M.A.No.2708 of 2010 & Batch of Cases

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2708, 2709, 2710, 2711, 2712 of 2010 & 2355, 2356, 2357,
2358, 2359, 2360, 2361 of 2012 & 505 of 2013
and M.P.Nos. 1 of 2010, 1 of 2010, 1 of 2010, 1 of 2010 & 1 of 2010, 1 of
2012, 1 of 2012, 1 of 2012, 1 of 2012, 1 of 2012, 1 of 2012 & 1 of 2012 and
1 of 2013

CMA.No.2708 of 2010

The United India Insurance Company Ltd.,
Katpadi Raod,
74-A, Salaai Road,
Vellore District.

.. Appellant

Vs.

1.Vanitha

2.Minor Ranjit

3.Minor Vidhya

4.Mottiammal

5.Senrayan

(Minors 2 & 3 are rep. by their mother & next friend guardian 1st
respondent Vanitha)

6.D.Kumar

7.J.Thangavel Achari

(Respondents 6 & 7 set exparte in the Lower Court)

.. Respondents



C.M.A.No.2708 of 2010 & Batch of Cases

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the decree and judgment, dated 12.01.2007 made in MACTOP.Nos.569, 573, 667, 669, 874, 550,549, 553, 555, 556, 565, 566 & 551 of 2002 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court), Thirupattur at Vellore District.

For Appellant : Mr.S.Arun Kumar

For Respondents 1 to 5 : Mr.Harishankar
Amicus Curie

For Respondent 6 : Exparte vide order dated 24.03.2023

For Respondent 7 : Exparte vide order dated 24.03.2023

COMMON JUDGMENT

These appeals arising out of a common award passed in MACTOP.Nos.569, 573, 667, 669, 874, 550,549, 553, 555, 556, 565, 566 & 551 of 2002 dated 12.01.2007 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court), Thirupattur at Vellore District.



2. Since all the appeals arising out of the Common Award, they were taken up together and disposed of by this Common Judgment. For the sake of convenience, CMA.No.2708 of 2010 is taken up as lead case in this batch of appeals.

3. The respective claimants filed claim petitions before the Claims Tribunal alleging that on 24.03.1996, the injured and the deceased persons were traveled as a coolie in a mini lorry bearing Reg.No. TN 45 Y 1626, owned by the seventh respondent/Thangavel Achari in CMA.No.2708 of 2002 insured with the appellant/Insurance Company which was owned by one Kumar who is the sixth respondent in CMA.No.2708 of 2002 and dashed against the bridge wall, thereby, the vehicle was capsized. Due to the impact, some of the persons travelled in the mini lorry died and some were injured. Therefore, the injured as well as the legal heirs of the deceased have filed claim petitions alleging that the accident was occurred due to rash and negligent driving of the driver of the mini lorry bearing Reg.No.TN45-Y-1626, owned by the 7th respondent and insured with the appellant/insurance company.



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4. The Tribunal, upon considering the oral and documentary evidence held that though the lorry in question was insured with the appellant/insurance company at the time of accident, some of the persons were travelled as unauthorised passengers and few were covered under the policy. Therefore, being insurer of the lorry, the appellant is liable to pay the compensation to all the claimants and then to recover the same from the owner of the lorry i.e., 7th respondent herein. Questioning the liability, the appellant/insurance company filed these appeals.

5. Learned counsel for the appellant would submit that the case of the appellant is based on Ex.P4/RC Book and Ex.P5/Insurance Policy marked before the Claims Tribunal. On perusal of the same, it reveals that the vehicle in question is a goods carrier and no person is entitled to travel, except the persons allowed to travel as per the terms of the Insurance Policy. In Ex.P5 it has been stated that the vehicle is a public carrier. However, it means that no unauthorised persons were allowed to travel in the goods vehicle and hence, the appellant is not entitled to pay the compensation, since no amount was paid under the policy for unauthorised passengers. However, without considering the same, the Trial Court mechanically fixed



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the negligence as against the driver of the vehicle and fastened the liability upon the appellant/Insurance Company. Accordingly, he prayed for allowing the appeals.

6. Despite notice through paper publication, the names of the claimants were printed in the cause list, none appears on behalf of the claimants/respondents 1 to 5. Since there was no representation for the claimants/respondents 1 to 5, this Court appoints Mr.Hari Shankar, learned counsel as *Amicus Curie* to assist this Court.

7. Learned Amicus Curie would submit that upon perusal of Ex.P5 policy, there is a specific contract between the appellant/Insurance Company and the seventh respondent/Thangavel Achari, the same makes it clear that the vehicle is a public carrier vehicle and there is no prohibition for coolie as unauthorized passenger and no detailed policy was also marked by the appellant/Insurance company and the policy was marked only by the claimants.



8. Learned Amicus Curie further submitted that RW1 was examined by the appellant/Insurance Company through whom IMT policy was marked and no Insurance Policy was marked. RW1 deposed before the claims Tribunal, that after 5 years, the policy will be dispatched and he also admitted that no policy was marked before the Trial Court. Thereby, the Tribunal on perusal of Ex.P5, passed award in favour of the respective claimants, which does not warrant any interference by this Court and prayed for dismissal of the appeals.

9. Heard the learned counsel for the appellant and the learned Amicus Curie for the claimants/respondents 1 to 5 and this Court has also perused the materials available on record.

10. On consideration of the oral and documentary evidence adduced by the parties and as rightly held by the Tribunal, the mini lorry in question owned by the 7th respondent and driven by the 6th respondent was insured with the appellant/insurance company, at the time of accident, the accident was occurred due to rash and negligent driving of the 6th respondent. Moreover, some of the occupants were entitled to be covered under the



policy and some were travelled as unauthorized passenger. It also appears that the vehicle in question is a public carrier and there was an agreement/contract between the appellant/insurance company and the owner of the vehicle. That apart, the appellant has failed to prove that the vehicle was hired to transport passengers for attending a political rally. Under these circumstances, the Tribunal has rightly ordered for pay and recovery. This Court finds that there is no infirmity or perversity in the findings recorded by the Tribunal.

11. With regard to the quantum of compensation awarded by the Tribunal, this Court finds that the appellant/insurance company has not challenged the quantum. Therefore, there is no elaborate discussion required in respect of the quantum of the compensation awarded by the Tribunal. Further, on a reading of the Award, particularly discussion of the Tribunal point No.3, it is seen that the Tribunal after analysing and discussing the each and every case, awarded just and reasonable compensation. This Court finds, the compensation awarded by the Tribunal is not on higher side.



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12. For all the reasons stated above, the Award of the Tribunal in MACTOP.Nos.569, 573, 667, 669, 874, 550,549, 553, 555, 556, 565, 566 & 551 of 2002 is perfectly right and no valid reasons are made out by the appellant/insurance company to interfere with the same.

13. In the result, the appeals are dismissed. The appellant/insurance company is directed to pay the compensation as directed by the Tribunal, if not already deposited, the same shall be deposited within a period of two(2) months from the date of receipt of a copy of this judgment. No costs. Consequently connected miscellaneous petitions are closed.

12.11.2024

msv

Index : Yes

Speaking Order : Yes

To
Motor Accident Claims Tribunal
(Additional District Judge) (Fast Track Court),
Thirupattur, Vellore District.

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M.DHANDAPANI,J.

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