IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH.,J

C.M.A.No.1193,1167, 1189, 1191 and 1192 of 2022
and CMP Nos.8444, 8555, 8556, 8557 and 8559 of 2022

The New India Assurance Co Ltd.,
39-C Byepass Road, Dharmapuri town,
Dharmapuri Taluk and District – 636 701
..Appellant / 2nd respondent

Vs.

1. Kalaiselvi ..1st respondent /petitioner

2. Kasi ..2nd respondent /1st respondent

PRAYER in CMA No.1193 of 2022 : Civil Miscellaneous Appeal filed under 173 of the Motor Vehicles Act, to set aside the judgement and decree passed by the Tribunal in the above MCOP No.398 of 2019 on the file of Motor Accident Claims Tribunal (Special Subordinate Court, (MACT) at Dharmapuri dated 30.09.2021).

For Appellant : Mr.M.Krishnamoorthy

For Respondent : Mr.D.Ramesh Kumar

COMMON JUDGMENT

The issue involved in all these appeals are common and hence, they are taken up together, heard and disposed of through this common order.

2. The case of the claimant is that on 04.03.2019 at about 6.15 p.m., they were travelling in an Auto, which was driven in a rash and negligent manner and all of a sudden, the Auto Rickshaw stopped in the middle of the road and the lorry which was coming behind the Auto, dashed the Auto and caused the accident. All the claimants sustained injuries and they were admitted to the Government Hospital, Dharmapuri. It is under these circumstances, the claim petitions came to be filed before the Tribunal.

3. The Tribunal on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to a conclusion that the accident had

taken place only due to the rash and negligent driving on the part of the Auto driver. Therefore, even though the offending vehicle was the lorry, the negligence was attributed against the auto driver. Hence, it was fixed against the auto driver. Admittedly, the driver and the owner of the offending vehicle were not made as respondents in the claim petition.

4. Having rendered the above findings, the Tribunal proceeded to fix the compensation in each claim petition. Insofar as CMA No.1193 of 2022, the total compensation fixed was Rs.29,407/-. In the other four appeals, the total compensation was fixed as Rs.25,000/-.

5. The Insurance company has preferred all these appeals mainly by questioning the liability that was mulcted on the insurance company.

6. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant and Mr.D.Ramesh Kumar, learned counsel for

respondent.

7. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

8. This Court has also carefully gone through the award passed by the Tribunal.

9. The main ground that was urged by the learned counsel for the appellant in all these appeals is that admittedly, the lorry was involved in the accident and the same had dashed the Auto from behind. While so, the offending vehicle was not brought in and the driver and owner of the vehicle were not made as parties. Hence, the liability of the insurance company is questioned on this ground. That apart, it was also submitted that the seating capacity of the Auto is one Driver and three passengers. Whereas, in the instant case, nearly seven passengers and the auto driver

totaling eight traveled in the auto. The Coverage of the insurance confined itself only to a seating capacity of three passengers. Therefore even if this Court is not inclined to interfere with the liability, the total liability of the insurance company must be confined only to three passengers and the insurance company cannot be made liable for the liability of all the passengers.

10. The learned counsel for claimants submitted that a very meager amount has been fixed as compensation in this case and the claimants are all coolies and therefore, even if this Court wants to fix the liability only for three passengers, the insurance company cannot be directed to pay the compensation amount to the other claimants also and recover the same from the 1st respondent.

11. Taking into consideration the fact that only a meager amount has been fixed as compensation and the claimants are working as coolies, this Court does not want to go into the liability aspect. The Tribunal has come to a conclusion based on the evidence available that the Auto was driven in a rash and

negligent manner and therefore, the negligence has been fixed on the Auto Driver. This Court does not want to interfere with the said findings. Insofar as fastening the liability on the insurance company, it is seen that there was an insurance coverage only for the seating capacity in the Auto, which is three passengers and one driver. Nearly seven passengers and one driver had traveled in the auto, which is beyond the seating capacity of the Auto. Therefore, the question is as to whether the insurance company can be made liable to pay the compensation for all the claimants.

12. The above issue is no longer *res integra* and it is squarely covered by the judgement of the Apex Court in ***[National Insurance Company limited Vs.Anjana Shyam and others]*** reported in ***2007(2) TN MAC 193 (SC).*** The relevant portions in the judgement are extracted hereunder :-

> *12. Section 58 of the Act makes special provisions in regard to transport vehicles. Sub-Section (2) provides that a registering authority, when registering a transport vehicle, shall enter in the record of registration and in the certificate of registration various particulars. Clause*

(d) provides that if the vehicle is used or adapted to be used for carriage of passengers, the number of passengers for whom accommodation is provided. Thus the registration of the vehicle, which alone makes it usable on the road, records the number of passengers to be carried and the certificate of registration also contains that entry. So, an insurance company insuring the passengers carried in a vehicle in terms of Section 147(1)(b)(ii) of the Act, can only insure such number of passengers as are shown in the certificate of registration. The position is reinforced by Section 72 of the Act, which deals with grant of stage carriage permits. Sub-Section (2) provides that when a permit is decided to be granted for a stage carriage, the Regional Transport Authority can attach to the permit one or more of the conditions specified therein. Clause (vii) is the condition regarding the maximum number of passengers that may be carried in a stage carriage. Overloading also invites a consequence which can be termed penal. Section 86 of the Act provides for cancellation of a permit if any condition contained in the permit is breached. Therefore, the apparent wide words of Section 147(1)(b)(ii) of the Act have to be construed harmoniously with the other provisions of the Act, namely, Sections 58 and 72 of the Act. As early as in 1846, Dr. Lushington in Queen V. Eduljee Byramjee [(1846) 3 MIA 468] posited that to ascertain the true meaning of a clause in a statute

the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. This Court has accepted this approach in innumerable cases. Thus, the expression 'any passenger' must be understood as passenger authorized to be carried in the vehicle and 'use of the vehicle' as permitted use of the vehicle. Affording of insurance for more number of passengers than permitted, would be illegal since in that case the manifest intention would be the overloading of the vehicle, something not contemplated by law. Thus, it is not possible to accept a contention that the insurance can be taken to cover more passengers than permitted by the certificate of registration and the permit as a stage carriage and that it will cover all the passengers overloaded. Of course, in these cases, there is no dispute that the insurance cover took in only the permitted number of passengers.

13. In this situation, the insurance taken out for the number of permitted passengers can alone determine the liability of the insurance company in respect of those passengers. In terms of Section 149 of the Act, the duty of the insurer is only to satisfy judgments and awards against persons insured in respect of the third party risk. Obviously, this is to the extent the third party risk is coverable and is covered. Section 149 of the Act speaks of judgment or award being obtained against any person insured by the policy and the liability of the insurer to pay to the person *entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder subject to any claim the insurer may have against the owner of the vehicle. Section 149 could not be understood as compelling an insurance company to make payment of amounts covered by decrees not only in respect of the number of persons covered by the policy itself but even in respect of those who are not covered by the policy and who have been loaded into the vehicle against the terms of the permit and against the terms of the condition of registration of the vehicle and in terms of violation of a statute.*

14. It is true that the provisions in Chapter XI of the Act are intended for the benefit of third parties with a view to ensure that they receive the fruits of the awards obtained by them straightaway with an element of certainty and not to make them wait for a prolonged recovery proceeding as against the owner of the vehicle. But from that, it would not be possible to take the next step and find that the insurance company is bound to cover liabilities not covered by the contract of insurance itself. The Act only imposes an obligation to take out insurance to cover third party risks and in the case of stage carriages, the passengers to be carried in the vehicle and the passengers to be carried in the vehicle can be understood only as passengers authorized or permitted to be carried in the vehicle.

15. In spite of the relevant provisions of the statute, insurance still remains a contract between the owner and the insurer and the parties are governed by the terms of their contract. The statute has made insurance obligatory in public interest and by way of social security and it has also provided that the insurer would be obliged to fulfil his obligations as imposed by the contract and as overseen by the statute notwithstanding any claim he may have against the other contracting party, the owner, and meet the claims of third parties subject to the exceptions provided in Section 149(2) of the Act. But that does not mean that an insurer is bound to pay amounts outside the contract of insurance itself or in respect of persons not covered by the contract at all. In other words, the insured is covered only to the extent of the passengers permitted to be insured or directed to be insured by the statute and actually covered by the contract. The High Court has considered only the aspect whether by overloading the vehicle, the owner had put the vehicle to a use not allowed by the permit under which the vehicle is used. This aspect is different from the aspect of determining the extent of the liability of the insurance company in respect of the passengers of a stage carriage insured in terms of Section 147(1)(b)(ii) of the Act. We are of the view that the insurance company can be made liable only in respect of the number of passengers for whom insurance can be taken under the Act and for whom insurance has been *taken as a fact and not in respect of the other passengers involved in the accident in a case of overloading.*

16. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is *derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately.*

13. It is clear from the above judgment that the insurance company can be made liable only for the number of passengers for whom the coverage has been given under the Insurance policy. The Apex Court has devised a method as to how the compensation must be given for the passengers, who are covered within the

seating capacity at paragraph No.16 of the judgement.

14. It is not possible to fasten the liability on the insurance company with respect to the passengers beyond three passengers, which is the seating capacity and ask the insurance company to pay the compensation for two others also and recover the same from the owner of the vehicle. Such direction will go contrary to the above judgement passed by the Apex Court.

15. In view of the above, the liability of the Insurance company is confined to payment of compensation to the claimants in CMA No.1193 of 2022 pertaining to MCOP No.398 of 2019, CMA No.1167 of 2022 pertaining to MCOP No.399 of 2019 and CMA No.1189 of 2022 pertaining to MCOP No.401 of 2019. Insofar as the other two claimants in CMA No.1191 and 1192 of 2022 pertaining to MCOP No.574 of 2019 and 575 of 2019, they have to get their compensation only from the 1st respondent and the insurance company cannot be directed to pay compensation to

these two claimants.

16. The main award passed by the Tribunal is modified to the above extent. The amount if any deposited in MCOP No.574 and 575 of 2019 relating to CMA No.1191 and 1192 of 2022 by the insurance company shall be permitted to be withdrawn by the Insurance company with accrued interest.

17. All these Civil Miscellaneous Appeals are disposed of in the above terms. No costs. Consequently, all connected miscellaneous petitions are closed.

04.04.2024

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Index: Yes/No
Internet:Yes/No
Speaking order/Non-Speaking Order

To

Motor Accident Claims Tribunal (Special Subordinate Court, (MACT) at Dharmapuri

N.ANAND VENKATESH.,J

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C.M.A.No.1193,1167, 1189, 1191 and 1192 of 2022

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