IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.Nos.867, 871, 875, 876, 880, 883 & 889 of 2020
and
CMP.Nos.5577, 5582, 5593, 5599, 5610, 5626 & 5658 of 2020

United India Insurance Co. Ltd.,
Rep. by its Divisional Manager,
KBS Motor Buildings, No.36, Katpadi Road,
Gandhi Nagar, Vellore. ...Appellant in all CMA's.

Vs.

1. Kamalaveni ...1st Respondent in CMA.No.867 of 2020

2. Suseela ...1st Respondent in CMA.No.871 of 2020

3. M.Uma Rani ...1st Respondent in CMA.No.875 of 2020

4. Lakshmi ...1st Respondent in CMA.No.876 of 2020

5. Minor Rajiv @ Rajiv Gandhi
   Minor rep. by the N.F. Mother N.Suseela
   ...1st Respondent in CMA.No.880 of 2020

6. P.Murugesan ...1st Respondent in CMA.No.883 of 2020

7. G.Durga ...1st Respondent in CMA.No.889 of 2020

8. Yesu Naidu ...2nd Respondent in all CMA's.

**Common Prayer**: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and decree passed in M.C.O.P.Nos.87, 90, 85, 82, 89, 83 and 88 of 2014 respectively on 20.02.2019 on the file of the learned Motor Accident Claims Tribunal (Sub-ordinate Judge), Vaniyambadi.

**In all CMA's.:**

For Appellant : Mr.J.Chandran

For Respondents : Ms.Sreevidhya, for R3

**COMMON JUDGEMENT**

Since all these appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the common decree and judgment made in M.C.O.P.Nos.82, 83, 85, 87, 88, 89 & 90 of 2014 dated 20.02.2019, on the file of the learned Motor Accident Claims Tribunal (Sub-ordinate Judge), Vaniyambadi, the appellant-insurance company has filed the respective appeals before this Court.

3. The case of the respective 1st respondent/claimant is that, on 01.03.2014 when the claimants along with their relatives left Thirunallaru and were returning to their Village in a TATA Sumo bearing Regn.No.TN-21-D-1554 owned by the 2nd respondent insured with the appellant-insurance company, the driver of the said vehicle drove the same in a rash and negligent manner at an uncontrollable speed, lost control and dashed against the road side Tamarind Tree, due to which, the claimants sustained grievous injuries. Thereby, the respective 1st respondents/claimants filed respective claim petitions in M.C.O.P.Nos.87, 90, 85, 82, 89, 83 and 88 of 2014 claiming compensation. Before the tribunal, three witnesses viz., P.W.1 to P.W.7 were examined on the side of the claimants and marked Exs.P.1 to Ex.P.36 and one witness viz., R.W.1 was examined on the side of the appellant and the respondents therein and the copy of the insurance policy was marked as Ex.R.1 before the tribunal and the Disability certificates were marked as Ex.C.1 to C.3. After adjudication, the Tribunal awarded compensation of Rs.5,71,550/-, Rs.28,000/-, Rs.25,000/- Rs.8,52,500/-, Rs.25,000/-, Rs.25,500/- and Rs.10,66,284/- respectively in favour of the respective 1st respondents/ claimants. Challenging the same, the insurer has come up with these appeals.

4. Learned counsel for the appellant submitted that, as per the insurance policy which was marked as Ex.R1 before the tribunal, there is no seating capacity available in the insurance policy and no premium was paid to the occupants of the car except the third party premium and the claimants, who are the occupants of the car are unauthorised passengers and it is an Act only policy. Further, the issue is already covered by the decision of the Hon'ble Apex Court in the case of ***Ramkhiladi and Another Vs. United India Insurance Co. Ltd and Another [2020 (1) TN MAC 1 (SC)].*** Accordingly, he prays for appropriate orders.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent submitted that, it is evident from the RC marked as Ex.P6 in which an endorsement is made as T-board and once it is a T-board vehicle, the occupants are necessarily to be treated as third party and they are entitled to claim compensation as per the insurance policy, since premium has been paid for third party. Thereby, the tribunal, after careful consideration of the said facts had passed the present award, which need not be interfered with.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. The issue involved in the present case is as to whether the persons/ occupants travelled in T-board vehicle are entitled to be treated as third party.

8. In this regard, this Court perused the insurance policy contracted into between the appellant-insurer and the 2nd respondent/owner, which was marked as Ex.R1, and on perusal of the same, it is evident that it is only an Act only policy and except third party premium, no additional premium has been paid and for the person for whom the premium has been paid alone can claim compensation and, therefore, in the present case, only a claim by a third party is permissible. Though it is the claim of the claimants that the vehicle is a T-Board vehicle, however a perusal of the policy reveals that the vehicle is mentioned as Private car.

9. Though it is the claim of the claimants that the passengers of T-Board vehicle are to be construed as third parties, neither any law nor any decision

has been placed before this Court to hold that the passengers of T-Board vehicle are third parties. Further, except for the contention, there is no material placed by the claimants to prove that the said vehicle was not a private car but a T-board vehicle. In the absence of any proof with regard to the vehicle and also in the absence of any law, which provides that the passengers of T-Board vehicle are third parties, the claimants cannot claim compensation as against the appellant-insurance company. However, the tribunal had erroneously fastened the entire liability as against the appellant-insurer, which is not sustainable.

10. In this regard, the decision of the Apex Court in the case of ***Ramkhiladi and Another Vs. United India Insurance Co. Ltd and Another [2020 (1) TN MAC 1 (SC)]*** also comes to the aid of the appellant and, therefore, this Court has no hesitation to hold that the award fastening liability on the appellant/insurer of the vehicle is erroneous and is liable to be set aside. Therefore, the impugned order fastening liability on the 2nd respondent is set aside.

11. However, in the absence of any appeal by the 2nd respondent, viz., the owner of the vehicle, this Court is not inclined to interfere with the compensation awarded to the claimants and the claimants are entitled to the compensation from the 2nd respondent.

12. Accordingly, these Civil Miscellaneous appeals filed by the insurer are allowed and the impugned Award of the Tribunal insofar as fixing the liability on the appellant/insurer is set aside and instead the liability is fixed on the 2nd respondent and the claimants are granted liberty to proceed against the 2nd respondent to recover the compensation awarded by the Tribunal in the manner known to law. The appellant/insurance company is permitted to withdraw the compensation amount, if any, deposited by them. No costs. Consequently, the connected Miscellaneous petitions are closed.

**19.11.2024**

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Index : Yes / No
Speaking Order : Yes / No
NCC : Yes / No

**M.DHANDAPANI, J.**

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To:

1. The Motor Accident Claims Tribunal (Sub-ordinate Judge), Vaniyambadi.

2. The Section Officer, V.R. Section, High Court of Madras.

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