IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068 of 2024 and CMP Nos.9929, 9906, 9908, 9931, 9932, 9874, 9877, 9878, 9880, 9881, 9882, 9883, 9886, 9887, 9888, 9889, 9891, 9893, 9895, 9897, 9902, 9904 of 2024

CMA No.1047 of 2024

The Manager
The Oriental Insurance Co., Ltd.,
No.32/312, Vijayalakshmi Complex
Sathuvacheri, Vellore – 9. ..Appellant

.vs.

1.Arumugam

2.Radha ..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the decree and judgment passed in MCOP No.256 of 2020 dated 24.07.2023 on the file of the learned Motor Accident Claims Tribunal (Special Sub Judge), Tiruvannamalai.

For Appellant in all CMAs : Mr.J.Chandran

JUDGMENT

All these appeals arise out of a common Award passed by the Motor Accident Claims Tribunal, Tiruvannamalai in MCOP Nos.254 of 2020, 255 of 2020, 256 of 2020, 257 of 2020, 258 of 2020, 259 of 2020, 260 of 2020, 261 of 2020, 262 of 2020, 263 of 2020, 264 of 2020, 265 of 2020, 266 of 2020, 267 of 2020, 268 of 2020, 269 of 2020, 270 of 2020, 271 of 2020, 273 of 2020, 274 of 2020, 275 of 2020, 379 of 2020, dated 24.07.2023 and hence, common order is passed in these appeals.

2.The case of the claimants is that they were travelling as passengers in the van belonging to the 2nd respondent herein on 25.12.2019 from Thiruvannamalai to Melmaruvathur and at about 5 a.m., when the vehicle was near Salavathi Village in Thiruvannamalai, the driver of the vehicle had driven the vehicle in a rash and negligent manner and as a result, he lost control and the vehicle capsized. As a result, all the claimants sustained grievous injuries. It is under these circumstances, twenty two claim petitions came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of 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 driver of the van belonging to the 2nd respondent. Having rendered such a finding, the Tribunal proceeded to fix the compensation under various heads and the total compensation was fixed in these claim petitions in the following manner:

S.No	MCOP Nos.	Total Compensation
1.	MCOP No.254 of 2020	Rs.30,000/-
2.	MCOP No.255 of 2020	Rs.30,900/-
3.	MCOP No.256 of 2020	Rs.1,25,000/-
4.	MCOP No.257 of 2020	Rs.30,000/-
5.	MCOP No.258 of 2020	Rs.30,000/-
6.	MCOP No.259 of 2020	Rs.30,000/-
7.	MCOP No.260 of 2020	Rs.35,000/-
8.	MCOP No.261 of 2020	Rs.30,000/-
9.	MCOP No.262 of 2020	Rs.30,000/-
10.	MCOP No.263 of 2020	Rs.30,000/-
11.	MCOP No.264 of 2020	Rs.30,000/-
12.	MCOP No.265 of 2020	Rs.30,000/-
13.	MCOP No.266 of 2020	Rs.30,000/-
14.	MCOP No.267 of 2020	Rs.30,000/-
15.	MCOP No.268 of 2020	Rs.30,000/-
16.	MCOP No.269 of 2020	Rs.30,000/-
17.	MCOP No.270 of 2020	Rs.30,000/-
18.	MCOP No.271 of 2020	Rs.30,950/-

S.No	MCOP Nos.	Total Compensation
19.	MCOP No.273 of 2020	Rs.30,000/-
20.	MCOP No.274 of 2020	Rs.81,550/-
21.	MCOP No.275 of 2020	Rs.31,100/-
22.	MCOP No.379 of 2020	Rs.30,000/-

4.The Insurance Company aggrieved by the common Award passed by the Tribunal has preferred these appeals before this Court.

5.Heard Mr.J.Chandran, learned counsel appearing on behalf of the appellant Insurance Company and carefully perused the materials available on record and this Court also carefully went through the Award passed by the Tribunal.

6.The main ground that was urged by the learned counsel for the appellant is that the van belonging to the 2nd respondent herein was covered by an insurance policy which permitted only 12 persons to travel in the vehicle apart from the driver (12 + 1). But however, there were twenty three persons who were travelling beyond the seating capacity and as a result, due to the over loading, the accident had taken place and therefore, the Insurance Company should not be made liable for the payment of the compensation, considering the fact that there is a violation of permit and violation of the terms of the insurance policy.

7.The learned counsel for the appellant further contended that the Tribunal ought to have totally exonerated the insurance company from the liability and the entire liability should have been fastened only as against the 2nd respondent who is the owner of the vehicle. Even assuming that the liability can be fastened against the Insurance Company, the Tribunal ought to have ordered for pay and recover in all the cases, considering the fact that there was violation of the policy condition.

8.In the considered view of this Court, the Tribunal has dealt with the aspect of liability from Paragraph No.147 of the Award. The Tribunal has taken into consideration the insurance policy that was marked as Ex.P3 that was issued to the offending vehicle and also the Motor Vehicle Inspector's Report which was marked as Ex.P2. The Tribunal after taking into consideration the judgement of the Apex Court in ***United India Insurance Company Ltd., vs. K.M.Poonam and Others*** reported in ***2015 (15) SCC 297***, came to a conclusion that the Insurance Company is liable to compensate the persons for whom the insurance cover is available (12 + 1). Considering the above judgement, the Tribunal held that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amount so deposited should be disbursed to the claimants in respect of their claims covered under the insurance policy and it will be apportioned for thirteen persons in the descending order starting from the highest claim made. Accordingly, the Tribunal has concluded that the insurance company is liable to pay compensation amount for the claimants in MCOP Nos.254/2020, 255/2020, 256/2020, 257/2020, 258/2020, 259/2020, 260/2020, 261/2020, 271/2020, 273/2020, 274/2020 and 275/2020.

9.With respect to the other claimants, the Tribunal has invoked the principle of pay and recover from the owner of the vehicle viz., the 2nd respondent herein.

10.It is therefore clear from the Award passed by the Tribunal that the Tribunal has taken into consideration the insurance policy and also the judgement of the Apex Court and has rightly concluded that for certain claimants the compensation has to be paid in line with the policy and for the others, the pay and recover principle was applied. This Court does not find any illegality in the Award passed by the Tribunal. This is more so since the amount that was awarded in most of the cases was in the range of only Rs.30,000/- except for two cases.

11.In the light of the above discussion, this Court does not find any ground to interfere with the Award passed by the Tribunal and accordingly, all these appeals are dismissed.

12.The appellant insurance company is directed to deposit the compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No Costs. Consequently, connected miscellaneous petitions are closed.

30.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal (Special Sub Judge),
Tiruvannamalai.

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N. ANAND VENKATESH., J

ssr

CMA Nos.1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068 of 2024 and CMP Nos.9929, 9906, 9908, 9931, 9932, 9874, 9877, 9878, 9880, 9881, 9882, 9883, 9886, 9887, 9888, 9889, 9891, 9893, 9895, 9897, 9902, 9904 of 2024

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