



C.M.A.(MD)Nos.1159, 1113 and 1114 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos.1159, 1113 and 1114 of 2024

and CMP(MD)Nos.12159, 11690 and 11691 of 2024

In CMA(MD)No.1159 of 2024:

United India Insurance Co., Ltd.,
Rep. By its Manager,
Regional Office,
TP HUB,
7A, West Veli Street,
Madurai.

...Appellant/2nd Respondent

Vs.

1.Mayilrajan
2.R.Vijayakumar

...1st Respondent/Claimant
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 30.10.2023 passed in M.C.O.P.No.617 of 2017 on the file of the IV Additional Sub Judge, (Motor Accident Claims Tribunal), Madurai.

In CMA(MD)No.1113 of 2024:

United India Insurance Co., Ltd.,
Rep. By its Manager,
Regional Office,
TP HUB,
7A, West Veli Street,
Madurai.

...Appellant/2nd Respondent

Vs.



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1.Selvam
2.R.Vijayakumar

...1st Respondent/Claimant
...2nd Respondent/1st Respondent

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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 30.10.2023 passed in M.C.O.P.No.615 of 2017 on the file of the IV Additional Sub Judge, (Motor Accident Claims Tribunal)Madurai.

In CMA(MD)No.1114 of 2024:

United India Insurance Co., Ltd.,
Rep. By its Manager,
Regional Office,
TP HUB,
7A, West Veli Street,
Madurai.

...Appellant/2nd Respondent

Vs.

1.Murugan
2.R.Vijayakumar

...1st Respondent/Claimant
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 30.10.2023 passed in M.C.O.P.No.616 of 2017 on the file of the IV Additional Sub Judge, (Motor Accident Claims Tribunal)Madurai.

In three Appeals:

For Appellant	: Mr.I.Suthakaran
For R1	: Mr.V.N.Arjun for Mr.N.Vallinayagam
For R2	: No appearance



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COMMON JUDGMENT

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The above appeals have been filed by the insurance company challenging the awards passed by the Tribunal in three different claim petitions filed by the claimants, who sustained injuries in the same accident.

2. Since the issue involved in all three appeals is one and the same, the appeals are taken up together.

3. The claimants in all three appeals filed claim petitions before the Tribunal stating that while they were travelling in an Ashok Leyland goods vehicle as the owner of the goods(ducks), the driver of the vehicle drove the vehicle in a rash and negligent manner, as a result of which, the vehicle lost control and capsized, and the claimants sustained grievous injuries.

4. As stated above, the injured persons filed separate claim petitions. The owner of the Ashok Leyland goods vehicle remained exparte before the Tribunal in all the cases.



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5. The appellant filed a counter stating that ducks cannot be construed as goods; that the owner of the ducks cannot be treated as representatives of the goods; that the seating capacity in the vehicle is only two; that therefore, there were two gratuitous passengers; and that in any case, two passengers were dangerously seated above the iron cage, in which the ducks were taken, which is a statutory violation; and as such, the appellant is not liable to pay any compensation in all the claim petitions.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that there is no violation of policy condition; that the accident took place due to the negligence of the driver of the insured vehicle; that the appellant is liable to pay compensation; and awarded a total compensation of Rs.25,000/- for the first respondent/claimant in CMA(MD)No.1159 of 2024, Rs.2,08,150/- for the first respondent/claimant in CMA(MD)No.1113 of 2024 and Rs.2,67,300/- for the first respondent/claimant in CMA(MD)No.1114 of 2024.

7. The learned counsel for the appellant submitted that though the claimants had stated that they have travelled along with ducks as the



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owner/authorized agent of the goods, namely ducks, they were seated dangerously on the top of the iron cage; that there was no room or place for any person to be seated at the backside of the vehicle and hence, no negligence can be attributed to the driver; that the claimants ought to be treated as gratuitous passengers; and that the appellant should be exonerated from payment of compensation.

8. The learned counsel for the first respondent/claimants in all the appeals, per contra, submitted that they were taking ducks in the goods vehicle; that the claimants travelled as the owner/authorized representatives of the ducks; that they cannot be considered as gratuitous passengers; and that the Tribunal had rightly awarded the compensation to be payable by the appellant herein.

9. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The only point for consideration in the instant appeal is as follows:



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"Whether the appellant is liable to pay compensation".

11.The appellant would not be liable to pay compensation if the claimants are gratuitous passengers or had violated the law by travelling dangerously and were themselves tort-feasors. The fact that the claimants had travelled in the vehicle as the owner/authorized representatives of the ducks is not in dispute. Rule 236 of the Tamil Nadu Motor Vehicles Rules states that excluding the space reserved for driver, not more than six persons in addition to the driver can travel in any goods vehicle. In the instant case, in addition to the driver, three persons travelled in the goods carrier. The only question is therefore whether the claimants were seated on the top of the iron cage in which the ducks were placed and thereby had violated Rule 238 of the Motor Vehicles Rules, 1988. Rule 238 reads as follows:

"No person shall be carried in goods carriage upon the goods or otherwise in such a manner that such person is in danger of falling from the vehicle, and in no case shall any person be carried in a goods carriage in such a manner that any part of his person when he is in a sitting position, is at a height exceeding 300 centimeters from the surface upon which the vehicle rests."



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12. Out of three claimants, two of them seated in the backside of the vehicle have stated that they were seated so to take care of the ducks.

There is absolutely no evidence to show that the claimants were seated above the iron cage carrier dangerously. In the absence of any evidence, one cannot infer that the vehicle had no space for the two claimants to be seated. Therefore, in the absence of any violation of policy condition, this Court is of the view that the Tribunal was right in directing the appellant to pay compensation. The quantum of compensation awarded by the Tribunal is not under challenge. Therefore, the awards of the Tribunal in all three appeals are confirmed.

13. The appellant insurance company is directed to deposit the total compensation of **Rs.25,000/-** for the first respondent/ claimant in CMA(MD)No.1159 of 2024, **Rs.2,08,150/-** for the first respondent/ claimant in CMA(MD)No.1113 of 2024 and **Rs.2,67,300/-** for the first respondent/claimant in CMA(MD)No.1114 of 2024, with interest at the rate of 7.5% from the date of petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the amount by filing a suitable applications.



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14. In fine, the appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The IV Additional Sub Judge, (Motor Accident Claims Tribunal),
Madurai.

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



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SUNDER MOHAN, J.

CM

Common Judgment made in
C.M.A(MD)Nos.1159, 1113 and 1114 of 2024
and CMP(MD)Nos.12159, 11690 and 11691 of 2024

21.10.2024