BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.1163 & 1164 of 2017
and
C.M.P(MD)No.11657 & 11658 of 2017

C.M.A(MD)No.1163 of 2017:

United India Insurance Company Ltd.,
Tenkasi,
Through its Branch Manager. ... Appellant/3rd Respondent

Vs.

1.Mariammal ... Respondent/Petitioner

2.Murugesan ... Respondent/1st Respondent

3.Muthukumar ... Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.246 of 2009, dated 12.10.2011 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tenkasi.

C.M.A(MD)No.1164 of 2017:

United India Insurance Company Ltd.,
Tenkasi,
Through its Branch Manager. ... Appellant/3rd Respondent

Vs.

1.Thirumalai ... Respondent/Petitioner

2.Murugesan ... Respondent/1st Respondent

3.Muthukumar ... Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Order Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.247 of 2009, dated 12.10.2011 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tenkasi.

For Appellant	: Mr.J.S.Murali (In both cases)
For R1	: Mr.N.Sankar Ganesh (In both cases)
For R2 & R3	: No Appearance (In both cases)

COMMON JUDGMENT

Both the appeals have been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal / Sub Court, Tenkasi in M.C.O.P.Nos.246 and 247 of 2009 challenging the liability and quantum.

2. According to the claim petitioners, they were travelling as passengers in an auto which was owned by the 2nd respondent and driven by the 1st respondent in the claim petitions. The said auto was insured with the 3rd respondent in the claim petition. On 03.06.2009, when they were travelling as passengers in the said auto, the driver of the auto had driven the said vehicle in a rash and negligent manner and it got capsized. Both the passengers were injured in the said accident. The claimants in both the claim petitions have prayed for a compensation of Rs.3,00,000/- each.

3. The insurance company has filed a counter in both the claim petitions contending that the seating capacity of the auto is only 3. However, at the time of the accident, 4 passengers have travelled and therefore, the same is clearly in violation of the policy conditions. The insurance company has further contended that as per Exhibit R.2 / permit, the vehicle has to be operated only within 30 kms radius from the place of registration. However, the accident has taken place near Alangulam which is beyond 30 kms from the place of registration. Therefore, it is also a case of policy violation. They have further contended that the quantum as prayed for in the claim petition is excessive and they are not liable to pay any compensation.

4. The tribunal after considering the evidence on either side, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the auto. The tribunal has further found that the policy covers 3 passengers. However, only two of them have filed a claim petition. Therefore, the insurance company is liable to pay compensation. The tribunal has not considered the plea of violation of permit condition in the award. The tribunal has proceeded to pass an award of Rs.15,000/- in M.C.O.P.No.247 of 2009 and Rs. 1,20,000/- in M.C.O.No.246 of 2009. Challenging both these awards, the present appeals have been filed by the insurance company.

5. According to the learned counsel appearing for the insurance company, the seating capacity of the auto as per the permit is 3 and admittedly 4 persons have travelled at the time of the accident. Therefore, the tribunal was not right in mulcting the liability upon the insurance company. He further contended that the permit of the vehicle has been marked as Exhibit R.2 and the same would reflect that the vehicle could be operated only within 30 kms radius from the place of registration. However, the vehicle having met with an accident beyond

30 kms. Hence, they are not liable to pay any compensation. He further questioned the quantum of award passed by the tribunal. Hence, he prayed for setting aside the award passed by the tribunal.

6. Though the owner of the auto has been served and his name is printed in the cause list, he has not chosen to appear either in person or through counsel.

7. A perusal of Exhibit R.2 / permit reveals that the seating capacity of the auto is 3 + 1. However, 4 passengers (including the driver) have travelled in the auto. This fact is not in dispute. However, only two claim petitions have been filed seeking compensation. The Hon'ble Supreme Court in a judgment reported in ***2011 (1) TN MAC 441 (United India Insurance Co. Ltd., Vs. K.M.Poonam & Others)*** has held that when there is a finding of overloading, the highest awards up to the seating capacity has to be honoured by the insurance company. In the present case, only two awards have been passed when the seating capacity is 3. Therefore, this Court is not inclined to accept the said contention of the learned counsel appearing for the appellant.

8. A perusal of Exhibit R.2 further reveals that the vehicle has to be operated only within 30 kms radius from the place of registration. According to the counter filed by the insurance company, the vehicle has met with an accident beyond 30 kms. Though the owner and driver of the vehicle have been served, they have not chosen to file their counter before the tribunal disputing the said fact. They have chosen to remain ex parte. Even before this Court, they have not chosen to appear. In such circumstances, this Court is constrained to draw adverse inference to the fact that the accident has taken place beyond 30 kms radius from the place of registration of the vehicle. Therefore, it is a case of policy violation. A perusal of both the awards indicate that the quantum of award of the tribunal is reasonable and there is no scope for any interference.

9. In view of the above said deliberations, the award of the tribunal is hereby set aside and the appellant insurance company is directed to satisfy the award and thereafter, recover the same from the owner of the auto, namely the 2nd respondent (Muthukumar) in both the claim petitions.

10. With the said observations, both the appeals stand **allowed** to the extent as stated above. The insurance company is at liberty to recover the said amount from the owner of the vehicle by following the judgment of the Hon'ble Supreme Court in ***2004 (13) SCC 224 (Oriental Insurance Company Limited Vs. Shri Nanjappan & Others)***. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

31.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gbg

To

1.The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Tenkasi.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

gbg

Judgment made in
C.M.A(MD)Nos.1163 & 1164 of 2017

31.07.2024