

(2007) 02 MAD CK 0251
In the Madras High Court

National Insurance Co. Limited

APPELLANT

Vs

K. Ellammal and Others

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : (2007) 2 ACC 551

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—The above appeals are directed against the common order dated 15.4.2002 made in M.C.O.P. Nos. 3087, 3274, 3091, 3291, 4396, 3535, 3914, 3093, 3089, 3088, 3092, 3090, 3534 and 3536 of 1998 on the file of Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Chennai.

2. Brief facts leading to the filing of these appeals are that on 10.2.1998 at 7.30 a.m. while the first respondent/claimant in all these matters were travelling in a mini lorry bearing Registration No. TN-04-Z-7117 along with their goods from Koyambedu Market to Ponneri the driver of the said lorry driven it in a very rash and negligent manner As a result, the lorry capsized, all of them fell down and sustained grievous injuries. They had filed claim petitions seeking compensation from the owner of the said mini lorry and the insurance company. The Tribunal held that as the driver of the said mini lorry applied sudden brake, the accident took place and the lorry capsized, as a result of which, the claimants sustained grievous injuries, that the driver alone is responsible for the accident and that the insurance company alone is liable to pay compensation awarded to the claimants. Challenging the award passed by the Tribunal, the insurance company has preferred the above appeals.

3. The only ground raised by the learned Counsel appearing for the appellant/ insurance company is that the owner of the vehicle viz., the second respondent has violated permit and policy conditions by carrying fifteen persons in addition to driver at the time of accident and hence it is not liable to pay compensation.

4. It is not in dispute that the claimants are all gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into nor was any premium paid to the extent of the benefit of insurance to such category of people.

5. The issue involved in these appeals has already been covered in the decision of the Apex Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, wherein it is held as follows:

The upshot of the aforementioned discussions is that instead and in place of the insurer, the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect....

We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

6. Following the decision of the Apex Court, a Division Bench of this Court in United India Insurance Co. Ltd. Vs. P. Jaya and Others, , held that the appellant Insurance Company is liable to pay the compensation amount to the claimants as awarded by the Tribunal and to recover the same from the owner in execution proceedings, without filing any suit there for.

7. In view of the decisions cited supra, the appellant Insurance Company is directed to pay the compensation amount first to the claimants as awarded by the Tribunal and, thereafter, to recover the same from the owner in execution proceedings, without filing any suit there for.

With the above modification, the appeals and the revisions are disposed of. No costs. Consequently, CMP Nos. 20995 and 20996/2003 and 10110/2006 are closed.