

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1028 of 2010

an

M.P.No.1 of 2010

National Insurance Co., Ltd.,
Chennai.

....Appellant/2n respondent
Vs

1.Devadita Alex Fernand

2.Minor Aaron Alex
(2nd respondent minor, rep by
mother and friend Devadita Alex Fernand)

3.Xavier Augustine Fernandes

4.Flory Fernand
(2nd respondent Minor rep by Mother and
Friend Devadita Aaron Fernand) R1 to R4/Petitioner

5.A.Jesudoss
[R-5 set exparte in the Lower Court] ...Respondent No. 1/R1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.08.2009 made in M.C.O.P.No.595 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.I) at Poonamallee.

For Appellant : Mr.S.Arunkumar

For Respondent : Mr.V.Manisekaran (for R1 to R4)

: R5 - Exparte

JUDGMENT

The instant appeal has been filed by the Appellant-Insurance Company challenging the Award dated 07.08.2009 passed by the Motor Accident Claims Tribunal (Additional District Judge) (Fast Track Court No.I) at Poonamallee, in M.C.O.P.No.595 of 2006.

2.The brief facts leading to the filing of the instant

appeal are as follows:

(i) One Alex Xavier Fernandes died on 19.12.2005 as a result of an accident caused by a TATA Sumo bearing registration No.TN-04-W-1066 owned by the fifth respondent and insured with the Appellant.

(ii) The dependents of the deceased Alex Xavier Fernandes are Respondent Nos.1 to 4 in this appeal. They preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.595 of 2006, seeking a compensation of Rs.20,00,000/-. (Rupees twenty lakhs only).

(iii) The Motor Accident Claims Tribunal, by its Award dated 07.08.2009 in M.C.O.P.No.595 of 2006, directed the Appellant to pay the respondent Nos.1 to 4, a sum of Rs.11,93,386/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 07.08.2009, passed by the Motor Accident Claims Tribunal in M.C.O.P.No.595 of 2006, the instant appeal has been filed by the Insurance Company.

4. Heard, Mr.S.Arunkumar, learned Counsel for the Appellant and Mr.V.Manisekaran, learned Counsel for the respondent Nos.1 to 4.

5. According to the learned Counsel for the Appellant, the vehicle in which the deceased was travelling was carrying more passengers than the permissible limit. According to him, the insurance policy was issued to the vehicle only to carry four passengers, but the vehicle was carrying seven passengers. Further, the learned Counsel would contend that under the insurance policy, the liability of the appellant was restricted only to Rs.50,000/- per passenger and the premium was paid by the owner of the vehicle only for that coverage. Therefore, according to him, the Award passed by the Tribunal directing the Appellant to pay a sum of Rs.11,93,386/- together with interest is not sustainable.

6. Per contra, the learned Counsel for the respondent Nos.1 to 4 would submit that the registration certificate of the vehicle permits the vehicle to carry eight passengers. Admittedly, the vehicle, at the time of accident, was carrying only seven passengers and therefore, it is within the permissible limit. According to him, knowing the capacity of the vehicle, the policy ought to have been issued by the Appellant to cover eight passengers and ought not to have been restricted only for four passengers.

7. The learned Counsel for the second respondent also drew the attention of this Court to the findings of the Tribunal on this issue, wherein, the Tribunal has given a clear finding that the Appellant is liable to compensate the claimants, who are the respondent Nos.1 to 4 in this appeal.

8.This Court, after having considered the materials available on record and after having examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

(a)It is an undisputed fact that the vehicle TATA Sumo can carry eight passengers as per the registration certificate issued by the Revenue Divisional Officer.

(b)The Appellant, by mistake, has given an insurance coverage under the policy only for four passengers, even though the vehicle is allowed to carry eight passengers as per the registration certificate.

(c) For the fault of the Appellant, the claimants, who are the respondent Nos.1 to 4 in this appeal, cannot be made to suffer. The Tribunal under the impugned Award has also considered this issue based on the materials available on record and has given a categorical finding that the Appellant is liable to compensate the claim of the respondent Nos.1 to 4.

(d) This Court cannot also grant pay and recovery rights to the Appellant even though there may be a policy violation committed by the owner of the vehicle, since it is an undisputed fact that the vehicle can carry eight passengers.

(e)The Appellant has not questioned the assessment of compensation awarded by the Tribunal in this appeal.

10.In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

11.It is also represented by the learned counsel appearing on both sides that the Insurance Company has already deposited the compensation awarded by the Tribunal and the respondent Nos.1 to 4 in the instant appeal have withdrawn the amounts lying to the credit of the M.C.O.P before the Tribunal.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

srn/mtl

To

1.The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No.I,
Poonamallee.

2.The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 66773

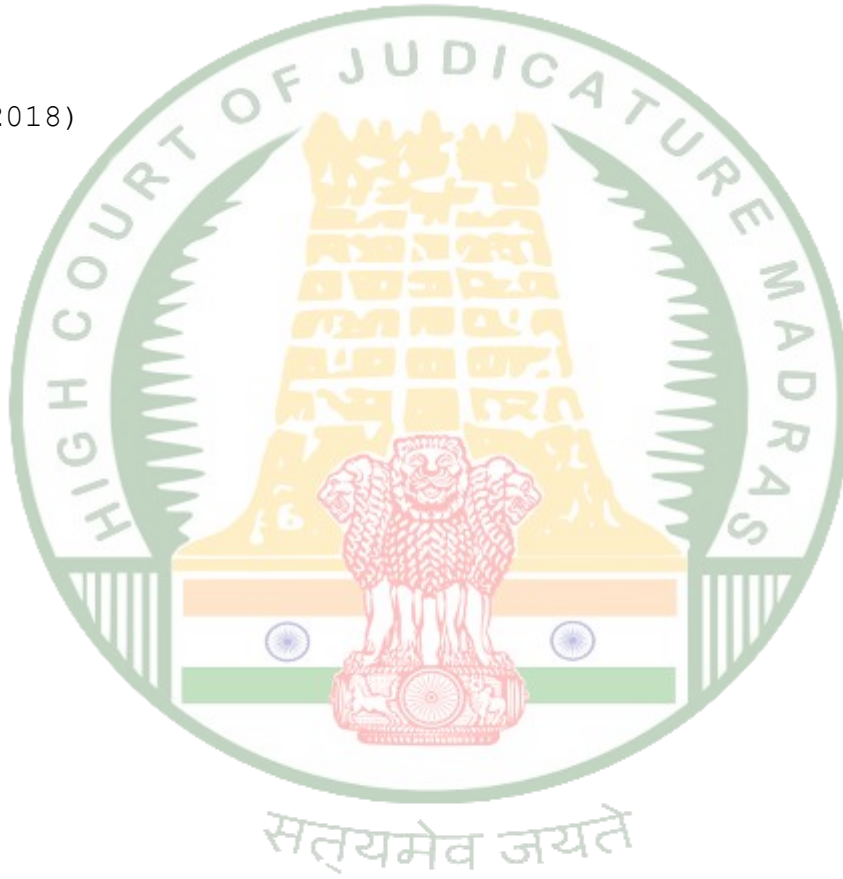
+1cc to Mr.M.Selvam, Advocate, S.R.No. 66184

C.M.A.No.1028 of 2010

AND

M.P.No.1 of 2010

VG II(CO)
GN(15/11/2018)



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