IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2019

PRONOUNCED ON : 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1326 of 2012
and
M.P.No.1 of 2012

The Branch Manager,
Bajaj Allianz General Insurance Company Limited,
KMA Complex, 1st Floor,
12-G, Ram Nagar,
Bye Pass Road,
Madurai. ...Appellant/ 2nd Respondent

.. Vs ..

1. Madesh

2. Sellammal ...Respondents 1 & 2/petitioners

3. V.Thangavel ...Respondent/ 1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 31.10.2011 made in M.C.O.P. No.223 of 2007 on the file of Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal.

For Appellant : Mrs.R.Sreevidhya

For R1 & R2 : Mr.R.Nalliyappan
For R3 : Exparte

JUDGMENT

The Insurance Company is the appellant herein. Challenging the award passed in MCOP.No.223 of 2007, on the file of Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal, the Insurance Company has come up with the present appeal on the point of liability.

2 The first and second respondents herein are the parents of the deceased bachelor boy, aged 18 years, who died in the accident and who was working as a load man (according to the PW1) have filed MCOP claiming compensation that the accident has taken place due to the rash and negligent driving of the driver of the third respondent herein, who has insured with the appellant here/Insurance Company.

3 On consideration of oral and documentary evidence, the Tribunal has held that the accident has taken place due to the rash and negligence driving of the driver of the tractor and also held that since, the deceased has travelled as a load man and premium has been paid covering the load man and hence, has awarded a compensation and also held that the Insurance Company is liable to pay compensation and hence, the appeal by the Insurance Company.

4 The learned counsel for the appellant herein/Insurance company would contend that the deceased having travelled in the Tractor as unauthorized person, is not entitled to Insurance coverage, as the same amounts to violation of the policy condition and hence, the Insurance Company cannot be mulcted with liability to pay the compensation and hence, prayed for allowing the appeal and exoneration of the liability on the part of the appellant herein / Insurance Company.

5 Heard both the learned counsel and perused the documents.

6 After hearing the both the parties and after perusal of the records, it is seen that the driver of the tractor was charge sheeted as per Ex.P4 and manner of the accident was not disputed by either of the parties and hence, the finding of the Tribunal is that the accident had taken place due to the rash and negligence driving of the driver of the tractor is hereby confirmed.

7 On the point of liability, Ex.P7/ Insurance Policy Coverage note was filed by the claimants and in clause 10 of the Premium Calculation, it is shown as under:

1.	Basic (OD Premium)	Rs.2,571.00
2.	Electrical Accessories	-
3.	Non-Electrical Accessories	-
4.	NCB	-

1.	Basic (OD Premium)	Rs.2,571.00
5.	TP Premium	Rs.1,510.00
6.	Owner Driver PA Cover	-
7.	Paid Driver, others	Rs.126.00
8.	PA to Passengers/Pillion	-
9.	Service Tax as applicable	Rs.515.00
10	Final Premium	Rs.4,722.00

8 As per the Judgment reported in 2017 (1) TNMAC 746 (SC) – [Mata Ram Vs. National Insurance Company Limited and others] and from Ex.R1/Insurance Policy, it is seen that the policy is in force and it is a "Farmers Package Insurance Policy" and premium was collected as per IMD Code 10003867 and that document is marked as Ex.P7/Policy Cover Note on behalf of the claimants and thus, this Court finds that the policy that was provided by the appellant/Insurance company on the date of the accident is in force and as per the premium schedule they have also collected extra premium. Hence, the factum that the deceased had travelled in the vehicle as a load man is being not disputed and also proved by the independent witnesses, this Court holds that the Insurance Company is liable to pay the compensation. Since, the deceased has travelled as a load man and premium has been paid under the policy, as per the decision reported in 2017 (1) TN MAC 746 – [Mata Ram Vs. National Insurance Company Limited and others], wherein, the Hon'ble Supreme Court has held that

> "since insured paid extra premium for insurance of driver and three employees - fact disclosed in Policy of Insurance – Insurer, when specifically charged premium for covering three persons excluding Driver, cannot be absolved from its liability – High Court failed to take note of said fact and modified Order passed by the Tribunal – Impugned Order, held, liable to be set aside. "

9 In view of the above, ratio laid down by the Hon'ble Apex Court, in the above decision coupled with the factual background of the case as that the deceased was travelled as a load man, the finding of the Tribunal is that the Insurance Company is liable to pay compensation is just and proper and this Court does not call for any interference.

10 In this view of the matter, the Civil Miscellaneous Appeal is dismissed and compensation awarded in MCOP.No.223 of 2007, on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Namakkal, is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Principal District Judge,
Namakkal.

2.The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to M/s.Sreevidhya, Advocate Sr.67225
+1cc to Mr.R.Nalliyappan, Advocate Sr.66826

C.M.A.No. 1326 of 2012

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srg 10/08/2021