

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2039 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

National Insurance Co. Ltd.,
Branch Manager,
Having office at,
No.62, T.S.R. Big Street,
Kumbakonam Town & Munisif.Appellant/2nd Respondent

Vs.

1. Anandan @ Anandh
2. Harikrishnan Respondents/Petitioner &
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 05.01.2010 made in M.C.O.P.No.61 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Mannargudi.

For Appellant : Mr.S.Arun Kumar

For Respondents: No appearance

JUDGMENT

Though the name of the learned counsel for the respondents is printed in the cause list, there is no representation continuously for the last four hearings. Hence this case is taken up for hearing.

2. The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 05.01.2010 passed by the Motor Accidents Claims Tribunal, Sub Court, Mannargudi in M.C.O.P.No.61 of 2007.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.85,000/- as against the total claim of

Rs.5,00,000/-, together with interest at 7.5% per annum from the date of filing of the claim petition (16.07.2007), till the date of deposit (05.01.2010), to the 1st respondent/claimant.

4. The facts are not in dispute. The claimant who is the 1st respondent herein had travelled in a Mini Door Auto which has a seating capacity of only one person. He stated that he was working as an agriculture coolie and travelled in the Mini Door Auto which was insured with the appellant/Insurance Company. On account of the injury suffered by him, he claimed to compensation. On the other hand, the appellant/Insurance Company has contested the liability fastened on it on the ground that the second respondent/owner of the Mini Door Auto had willfully violated the policy conditions by permitting the persons like the first respondent to travel as an unauthorized passenger.

5. It is submitted that the Mini Door Auto has only seating capacity of driver as per the decision of the Hon'ble Supreme Court in United India Insurance Company Vs Suresh K.K. & another, 2008 ACJ 1741.

6. The learned counsel for the appellant/Insurance Company was also submitted that the Regional Transport Officer was examined as P.W.1, who clearly deposed that the Mini Door Auto has only a single seating capacity ie., the driver alone and therefore submits that in view of the decision of the Hon'ble Supreme Court in United India Insurance Company Vs Suresh K.K. & another, 2008 ACJ 1741, the impugned order of the Tribunal is liable to be set aside.

7. The learned counsel for the appellant/Insurance Company also relies on the following decisions:-

- (i) National Insurance Company Limited, Gopichettipalayam Vs Thulasi & others, 1994 (1) L.W.567
- (ii) United India Insurance Co. Ltd., Vs Gian Chand & others, 1997 ACJ 1065
- (iii) New India Assurance Co. Ltd., Vs V.Chandran & another, 2010 (1) TNMAC 65
- (iv) New India Assurance Co. Ltd., Vs Asha Rani, 2002 (III) ACC 753
- (v) Oriental Insurance Co. Ltd., Vs Devi Reddy Konda Reddy & others, 2003 (2) SCC 339
- (vi) National Insurance Co. Ltd., Vs Baljit Kaur & others, 2004 (1) CTC 210
- (vii) 2005 (1) CTC 708
- (viii) 2005 ACJ 1871
- (xi) National Insurance Co. Ltd., Vs Koushalaya Devi and others, 2008 ACJ 2144

(x) United India Insurance Co. Ltd., Vs Suresh K.K. and another, 2008 ACJ 1741 and

(xi) Anasuyamma & others Vs B.Narsinga Rao and another, 2008 ACJ 2385.

8. It is noticed that this Court by an order dated 10.08.2010 as directed the appellant/Insurance Company to deposit 50% of the amount to the credit of M.C.O.P.No.61 of 2007 on the file of the said Sub Court in Mannargudi. It also appears that the amount was also permitted to be withdrawn.

9. Considering the minimal amount involved in this case and 50% of the amount has been already withdrawn, without expressing any opinion on the merits of the case, I am inclined to dispose this appeal filed by the appellant/Insurance Company with liberty to recover the amount paid to the claimant from owner of the insured vehicle. Accordingly the present Civil Miscellaneous Appeal is disposed with the above observation. No cost. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Sub Court, Mannargudi.

2. The Section Officer, सतयमेव जयते
VR Section, High Court, Madras.

+1cc to Mr.S.Arunkumar, Advocate, sr no.35501

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SR(CO)
RMP(13/05/2021)