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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.7.2021

CORAM

The Honourable Mr. Justice ABDUL QUDDHOSE

Civil Miscellaneous Appeal No.2599 of 2016
and CMP.No.18931 of 2016

National Insurance Company
Ltd., Attur, Salem District.

...Appellant/ Respondent2

Vs

1.Saranya
2.Ramaswamy
3.Mariyayi
4.Rajendran

...Respondents/ Petitioners 1 to
3 and R1 in Tribunal below

APPEAL under Section 173 of the Motor Vehicles Act, 1988
against the fair and decretal order dated 30.11.2015 in
MCOP.No.423 of 2012 on the file of the Motor Accidents Claims
Tribunal (Special District Court), Salem.

For Appellant	:	Mrs.N.B.Surekha
For Respondents 1 to 3	:	Mr.SP.Yuvaraj
Respondent-4	:	person not found

JUDGMENT

I have heard the learned counsel for the appellant and the
learned counsel appearing for respondents 1 to 3.

2. This appeal has been filed by the Insurance Company
challenging the award dated 30.11.2015 passed in MCOP.No.423 of
2012 on the file of the Motor Accidents Claims Tribunal (Special
District Court), Salem (hereinafter called the Tribunal).

3. The appellant - Insurance Company has challenged its
liability to pay compensation to respondents 1 to 3 herein -
claimants, as, according to them, the deceased was a gratuitous
passenger in the insured vehicle at the time of accident.



4. The learned counsel for the appellant herein - Insurance Company submits before this Court that respondents 1 to 3 herein - claimants have already withdrawn their compensation amount, which was deposited by the appellant herein - Insurance Company before the Tribunal pursuant to the directions given by the Tribunal. However, she further submits that the evidence available on record will clearly reveal that the deceased was a gratuitous passenger at the time of accident.

5. The learned counsel for the appellant herein - Insurance Company has drawn the attention of this Court to the insurance policy, which was marked as Ex.R1 before the Tribunal and would submit that the insurance policy gives coverage only for the driver and not for any other person travelling in the insured vehicle. She would also submit that there were six claims instituted pertaining to the very same accident and excepting for the claim, which is the subject matter of this appeal, the remaining five claims were adjudicated by the Tribunal holding that the owner of the vehicle alone was liable to pay compensation and has exonerated the appellant herein - Insurance Company. However, she would further submit that since the money has already been withdrawn by respondents 1 to 3 herein - claimants, it is sufficient that this Court may grant pay and recovery rights to the appellant herein - Insurance Company by directing the appellant to pay respondents 1 to 3 herein - claimants the compensation amount and recover the same from the insured namely the fourth respondent herein. She would also submit that the fourth respondent remained ex parte both before the Tribunal as well as before this Court.

6. This Court has also perused and examined Ex.R1 (insurance policy) and is in agreement with the submission made by the learned counsel appearing for the appellant herein - Insurance Company that the said policy gives coverage only for the driver of the vehicle and not to any other person travelling in the very same vehicle. Admittedly, the deceased was travelling in the vehicle along with the driver.

7. For the foregoing reasons, the award passed by the Tribunal holding the appellant herein - Insurance Company liable to pay compensation is confirmed. However, considering the fact that the fourth respondent herein (insured) committed a policy violation, the appellant herein - Insurance Company is granted pay and recovery rights.

8. Accordingly, the above civil miscellaneous appeal is partly allowed and this Court permits the appellant herein - Insurance Company to recover the compensation amount as determined by the Tribunal under the impugned award from the



fourth respondent herein in accordance with law after paying the same to respondents 1 to 3 herein - claimants, if not already paid. No costs. Consequently, the connected CMP is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal
(Special District Court), Salem.

+1cc to Mr.Mrs.N.B.Surekha, Advocate SR.No. 35755

+1cc to Mr. SP.Yuvaraj , Advocate SR.No. 36096

CMA.No.2599 of 2016 &
CMP.No.18931 of 2016

RGN(CO)
A.SK(20.09.2021)