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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3206 of 2014
and M.P.No.1 of 2014

The New India Assurance Company Ltd.,
M.L.Complex, First Floor,
10/11, Church Road,
Dharapuram.

.. Appellant/ 3rd Respondent

Vs.

1. Dhasarathan .. 1st Respondent/ Petitioner
2. Kumaresan
3. Jothimani .. Respondents 2 & 3/ Respondent 2 & 3
[2nd Respondent was set exparte
to the Lower Court Respondents 2 & 3
Hence Notice Dispense With]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 seeking to set aside the award and decree dated 16.07.2014 made in M.C.O.P.No.755 of 2012 on the file of Motor Accident Claims Tribunal, Subordinate Court, Dharapuram.

For Appellant : Mr.R.Sivakumar

For Respondent 1 : No appearance

For Respondents 2&3 : Given Up

JUDGMENT

(The case has been heard through video conference)

This appeal has been filed by the Insurance Company challenging the award dated 16.07.2014, passed by the Motor Accidents Claims Tribunal, Subordinate Court, Dharapuram in M.C.O.P.No.755 of 2012.

2. The appellant insurance company has challenged the impugned award on the following grounds:

(a) The driver of the insured mini door auto bearing Registration No.TN 20 AV 6315 was not possessing the necessary badge to drive



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the mini door auto on the date of the accident.

(b) The first respondent / claimant was an unauthorised passenger in the mini door auto (insured vehicle).

3. Heard Mr.R.Sivakumar, learned counsel appearing for the appellant insurance company. The first respondent / claimant has been duly served in this appeal and his name has also been printed in the cause list today, however, there is no representation on his side.

4. In so far as the contention raised by the appellant insurance company is concerned, the issue is now well settled by the decision of the Hon'ble Supreme Court in the case of Mukund Dewagan Vs. Oriental Insurance Company Limited reported in 2017 AIR (SC) 3668. In the said decision, the Hon'ble Supreme Court has held that there is no necessity for separate badge for driving goods vehicle, which is less than 7500 kgs. Admittedly in the instant case, the mini door auto (insured vehicle) weighs be less than 700 kgs and therefore the first contention of the appellant insurance company is rejected by this Court.

5. In so far as the second contention raised by the appellant insurance company that the first respondent/claimant was a gratuitous passenger is concerned, the appellant insurance company has not filed the insurance policy before the Tribunal. Therefore, they cannot take a plea now that the insurance policy does not give coverage to the first respondent/claimant. Therefore, the second contention of the appellant insurance company is also rejected by this Court.

6. For the foregoing reasons, there is no merit in this appeal and accordingly this appeal is dismissed. The appellant insurance company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.755 of 2012, on the file of the Motor Accident Claims Tribunal, Subordinate Court, Dharapuram. On such deposit of the compensation amount, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar



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To

The Motor Accident Claims Tribunal,
The Subordinate Judge,
Dharapuram.

Copy To:

The Section Officer,
VR Section, High Court, Madras.

+1CC to Mr.R.Sivakumar, Advocate, Sr.No.50977

C.M.A.No.3206 of 2014
and M.P.No.1 of 2014

NRJK(CO)
SB(16/11/2021)