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C.M.A(MD) No.1632 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1632 of 2010

and

M.P(MD)No.1 of 2010

M/s. Oriental Insurance Company Ltd.,
rep. by its Branch Manager,
G.H.Road,
D.No.565/1, Theni Town,
Theni District.

.. Appellant/2nd Respondent

vs.

1.Murugan

.. 1st Respondent/Claimant

2.Singaravel

.. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside or modify the order of the Tribunal in M.C.O.P.No.174 of 2007 dated 27.11.2009 on the file of the Motor Accident Claims Tribunal (Sub Judge), Srivilliputhur, Virudhunagar District and allow the appeal with costs.

For Appellant	: Mr.S.Veeranasamy
For R2	: Mr.G.Aravinthan
For R1	: No appearance

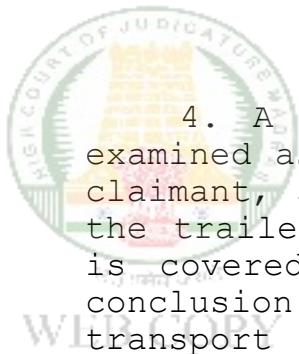
J U D G M E N T

The facts in brief:-

This is a case of injury. The first respondent herein, namely, Murugan, filed a claim petition for a sum of Rs. 2,00,000/- as compensation. The Tribunal has awarded a sum of Rs.15,000/-. Challenging the same, present appeal has been filed by the Insurance Company.

2. The injured claimant was one among the passenger in a tractor attached with trailer bearing Registration No.TN-72-W-4744 and TN-72-W-4745 used on 03.07.2006 for carrying Sugar-cane. The case of the claimant is that it was driven in a rash and negligent manner and it capsized, thereby, he sustained injury.

3. The appellant contended the claim petition stating that the claimant was a unauthorised passenger in a transport vehicle and there was no coverage to indemnify the owner and hence, they cannot be mulcted with liability.



4. A perusal of the records shows that the driver, who was examined as R.W.1, has admitted in his evidence that apart from the claimant, 5 other persons also travelled on the Sugar-cane load in the trailer, but nothing was produced to show that their liability is covered under the policy. The Tribunal, having come to the conclusion that the claimant was a unauthorised passenger in a transport vehicle, directed the insurance company to satisfy the award amount and thereafter, recover from the owner of the vehicle.

5. It is well settled that the persons travelling in a transport goods vehicle as gratuitous passengers or his legal heirs are not entitled to claim compensation from the Insurance Company. The Division Bench of this Court in **Bharati AXA General Insurance Co., Ltd., rep. by its Manager vs. Aandi and 2 others** reported in **2018(2) TN MAC 731 (DB)** set aside the order of the Tribunal directing the Insurance Company to pay and recover from the owner of the vehicle. Hence, I am of the opinion that the appellant Insurance Company is entitled to succeed in this appeal. Insofar as the quantum is concerned, the award of the Tribunal is confirmed and only with regard to liability of the Insurance Company alone is set aside. It is open to the claimant to recover the amount awarded by the Tribunal from the owner of the vehicle.

6. Accordingly, this Civil Miscellaneous Appeal is allowed.

7. If any amount is deposited by the Insurance Company to the credit of the claim petition, the same shall be refunded to the appellant/Insurance Company, if the same is not withdrawn by the claimant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Motor Accident Claims Tribunal
(Sub Judge), Srivilliputhur,
Virudhunagar District

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

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KK(24.05.2021) 3P 4C