

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.02.2021
Date of Judgment	12.05.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.777 of 2016

and

CMP(MD)No.7508 of 2016

ABT Maruti Ltd.,
rep by its Branch Manager,
Having Office at No.529/1,
Salem Bye Pass Road,
Vengamedu Circle,
Semmadai, Karur.

: Appellant/1st Respondent

Vs.

1.G.Rathinasabapathy : R1/Petitioner
2.Bajaj Allianz General Insurance Co. Ltd.,
Rep. by its Branch Manager,
Having Office at D.No.11,
Office No.6-A, Peoples Park,
3rd Floor, Govt. Arts College Road,
Coimbatore. : R2/Respondent No.2

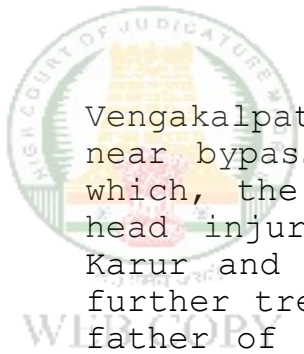
PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Karur, made in MCOP No.298 of 2012, dated 29.02.2016.

For Appellant : Mr.A.Selvam
For 1st Respondent : Mr.D.Nallathambi
For 2nd Respondent : Mr.J.S.Murali

J U D G M E N T

This appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Principal District Judge), Karur, made in MCOP No.298 of 2012, dated 29.02.2016

2.The short facts of the case is that the deceased Seenivasan was working as a Sales Representative in the appellant ABT Maruti Company, Karur. On 08.09.2021, he was entrusted the job of producing an unregistered Maruthi Swfit Dzure Car bearing Trade Certificate No.TN-47-TCR/W25/2011 before the Regional Transport Office, Karur, for registration. At about 11.00 am, when he was nearing



Vengakalpatti bridge, which was under construction, on Karur-Trichy near bypass road, he dashed on the centre median, as a result of which, the Car turned turtle and the deceased Seenivasan sustained head injury. Immediately, he was rushed to Amaravathi Hospital, Karur and after taking first aid, he was taken to Coimbatore for further treatment. However, he died on the way to the hospital. The father of the deceased filed a claim petition seeking compensation of Rs.30,00,000/- for the death of his son.

3.The claimant has stated that the deceased was 26 years at the time of accident and he was working as Sales Representative in ABT Maruti, Karur, thereby he was earning Rs.10,000/- per month.

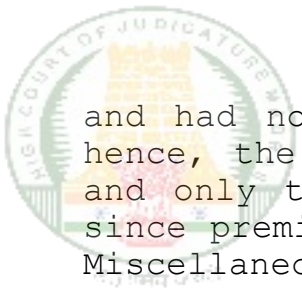
4.In the counter filed by the 2nd respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

5.Before the tribunal, on the side of the claimants, 2 witnesses were examined and marked 2 documents. On the side of the 2nd respondent Insurance Company, 2 witnesses were examined and 2 documents were marked.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, awarded compensation of Rs.6,42,000/- together with interest at the rate of 7.5% p.a, and directed the 1st respondent Insurance Company to pay the amount and then recover the same from the appellant Company. Aggrieved over the same, the Appellant Company is before this court.

7.Heard both sides and perused the materials available on record.

8.The dispute is in respect of quantum. The learned counsel appearing for the appellant/1st respondent argued that only due to the rash and negligent driving, the deceased died and hence, the appellant/1st respondent is not liable to pay the compensation and the deceased was qualified to drive the new brand Maruthi vehicle to the RTO, since he is having valid driving licence and the deceased is responsible for the sale of new vehicle till delivery to the purchaser with RC, as such he was acting as an engaged driver to the RTO for discharging statutory liability, who was paid a monthly salary of Rs.7,500/-, which includes driver batta and such other incentivise and the Insurance Policy is a package policy, which covers the brand new vehicle, which was taken for registration purpose within the radius of 80 kms and in the insurance policy, premium paid for the paid driver and the deceased was also engaged as a paid driver and the appellant/1st respondent as a owner of the unregistered Maruthi Swift Dzire, had a Trade Certificate for the said vehicle in No.TN-47-TCR/W25/2011 and the same was insured with the 2nd respondent Bajaj Insurance Company and as such, the claimant



and had not violated or breached any of the policy condition and hence, the appellant Company is not liable to pay the compensation and only the Insurance Company is liable to pay the compensation, since premium was paid for the paid driver and prays that the Civil Miscellaneous Appeal has to be allowed.

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9. On the other hand, the learned counsel appearing for the 2nd respondent/2nd respondent submitted that the appellant/1st respondent has paid premium under the head of paid driver under IMT and since the deceased is not a paid driver, the 2nd respondent Insurance Company is not liable to pay compensation to the claimant.

10. In this case, the claimant in his petition and evidence stated that the deceased was working as a Sale Representative in the appellant Company. To prove that at the time of accident, the deceased was a paid driver, no document was filed on the side of the claimant.

11. In this case, it is argued on the side of the 1st respondent/claimant that at the time of accident, the deceased was a paid driver. To prove it, no document was filed. On perusal of the records, it shows that at the time of accident, the deceased was working as 'Sale Representative' and not as 'paid driver.' On perusal of the insurance policy (Ex.P1), premium was paid only for the paid driver. Already, it was decided by this court that at the time of accident, the deceased was working as Sale Representative and not as paid driver, but however, the appellant/1st respondent knowing fully well, permitted the Sale Representative to drive the Car. Hence, it amounts to violation of policy condition. The tribunal, after considering all these aspects, has correctly come to the conclusion that the 2nd respondent Insurance Company is not liable to pay the compensation, however, ordered the 2nd Respondent Insurance Company to pay the compensation and then, recover the same from the owner of the vehicle.

12. In view of the above, this Court is of the considered view that the impugned award passed by the tribunal is correct and it does not require any interference of this court.

13. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

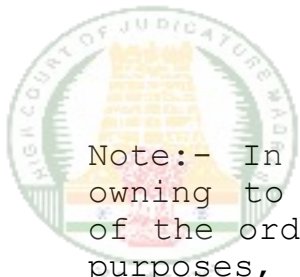
Sd/-

Assistant Registrar(T & P)

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Sub Assistant Registrar(CS)



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/
The Principal District Judge, Karur

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The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M/S D.NALLATHAMBI, Advocate (SR-18569[F] dated 17/05/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-18552[F] dated 13/05/2021)

Judgement made
in CMA(MD)No.777 of 2016
12.05.2021

SRK(CO)
TR(09.06.2021) 4P 6C