**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	11.01.2021
Date of Judgment	19.02.2021

CORAM**THE HONOURABLE Mrs.JUSTICE T.KRISHNAVALLI****C.M.A(MD) No.1162 of 2015****and****MP(MD)No.1 of 2015**

M/s.United India Insurance Company Limited,
Divisional Office,
Promenadet Road,
Cantonment,
Trichy.

: Appellant/2nd respondent

Vs.

1.Mrs.D.Amirtham : 1st respondent/Petitioner
2.Mr.Gopalakrishnan : 2nd respondent/R1

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award dated 28.03.2014 made in MCOP No.1057 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

For Appellant : Mr.B.Rajesh Saravanan
For 1st Respondent : Mr.N.Sudhagar Nagaraj
For 2nd Respondent : No appearance

JUDGMENT

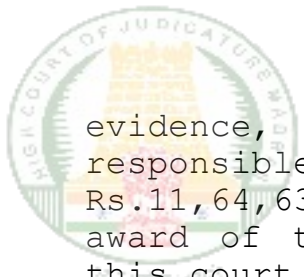
This Civil Miscellaneous Appeal is directed against the award, dated 28.03.2014 made in MCOP No.1057 of 2009 on the file of the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy.

2.The short facts of the case is that the claimant was travelling in the bus TN-32-B-0959 and proceeding from Devampattu to Madurai as pilgrimage and when the bus was proceeding near Malai Matha Kovil, Siruganur on Trichy-Chennai Road, due to the rash and negligent driving of the driver of the bus, the bus capsized. Due to it, the claimant and other passengers of the bus sustained grievous injuries. The claimant herein filed a claim petition claiming compensation of Rs. 20,00,000/- on the ground that the driver of the bus was responsible for the accident.

3.The appellant/Insurance Company is the second respondent in MCOP. The first respondent is the claimant. The second respondent is the owner of the bus. The second respondent, owner of the vehicle remained ex-parte before the tribunal.

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4.The Tribunal, upon consideration of oral and documentary



evidence, came to the conclusion that the driver of the bus was responsible for the accident and awarded compensation of Rs.11,64,630/- together with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court with this appeal.

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5.The learned counsel appearing for the appellant contended that the tribunal erred in holding that there was no violation of permit condition and the tribunal erred in holding that there was no violation of permit condition as the accident took place within the Trichy District and the Tribunal ought to have ordered pay and recovery as the second respondent violated the permit condition, which consequently, violated the policy condition. It is further submitted that the connected case in CMA(MD)Nos.1163 to 1205 of 2015, had disposed of by this court, by a common judgment, dated 24.04.2016 holding that the appellant Insurance Company is entitled for "Pay and Recovery" compensation from the owner of the vehicle and hence, similar order may be passed.

6.The learned counsel appearing for the 1st respondent/claimant submitted that the claimant had proved the accident took place only due to rash and negligent driving by the driver of the bus belonging to the second respondent and that the nature of injury suffered by them and therefore, compensation awarded is just compensation and prays for dismissal of the civil miscellaneous appeal.

7.Though the notice served on the second respondent and his name also printed in the cause list, he has not chosen to appear either in person or through counsel.

8.Only question to be decided in this appeal is whether the second respondent violated the permit condition and therefore, whether the appellant is entitled to order of pay and recovery.

9.From the evidence of RW1 and Ex.B1, the second respondent was given permit to ply the bus in specific route. RW1 categorically stated that no permission was granted to the second respondent to ply the bus in Trichy-Perambalur National Highways. Admittedly, the accident took place only in the place between Permbalur-Trichy National Highways. Therefore, the Tribunal erred in holding that there is no violation of permit condition as accident took place within Trichy District. Hence, it is held that the finding of the tribunal is liable to be set aside and hereby set aside.

10.It is settled law that if vehicle is plied without permit or violation of permit condition and it violates policy condition, the Insurance Company has to first pay the award amount and thereafter, recover from the insurer. Hence, the award of the tribunal is modified to that effect directing the appellant Insurance Company to pay the claimant the compensation awarded by the tribunal and thereafter, recover the same from the owner of the vehicle, second respondent herein, by way of Execution Petition, without actually



filing a suit as held by the Hon'ble Apex Court in the judgment reported in **2004(2) CTC 464 (Oriental Insurance Co. Ltd. Vs. Shri Nanjappan and others)**.

11. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the entire amount awarded by the tribunal together with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle, by following the mode in **Nanjappan's case [(2004) 2 CTC 464]**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accidents Claims Tribunal/
III Additional Sub Court, Trichy.

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

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-6489[F] dated 22/02/2021)

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-6584[F] dated 23/02/2021)

CMA (MD) No.1162 of 2015
19.02.2021

AC (CO)

KB(09.03.2021) 3P 6C