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C.M.A.No.2849 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2849 of 2014

and

M.P.No.1 of 2014

M/s.The New India Assurance Co.Ltd.,
Micro office, No.1029A, Salem Main Road,
KVB Upstairs, 2nd Floor, Attur,
Salem District - 636 102.

... Appellant

VS.

1.M.Anandraj
2.Mathappan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Decree order dated 14.09.2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge), in M.C.O.P.No.168 of 2012 at Ariyalur.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.R.Gokulakrishnan

For R2 : No appearance



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JUDGMENT

The appeal is filed by the Insurance Company of the offending vehicle.

2. The factum of the accident, manner of the accident, rash and negligence on the part of the driver of the vehicle are not in dispute.

3. To that extent, the finding rendered by the Tribunal is hereby confirmed.

4. The learned counsel for the appellant/ insurance company could contend that in the counter statement, it is specifically stated that on the date of the accident, the vehicle does not have fitness certificate and hence it amounts to violation of the policy condition.

5. Heard the learned counsel for the respondent.

6. At the time of the admission, the entire amount has been deposited as a condition for the stay.

7. On perusal of the oral evidence of R.W.1 Junior Assistant, R.T.O office and R.W.3 Assistant from the Insurance Company, coupled with the documentary evidence of Ex.R1 Motor Vehicle Report of the lorry



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R2 Motor Vehicle Report of the two wheeler and the policy certificate of the lorry marked as R5.

8. Admittedly as per the M.V. Report Ex.R1 on the date of the accident, the fitness certificate is not available.

9. As per the ratio laid down in **CMA No. 1576 of 2015 United India Insurance Co Ltd V R Vivekanandan**, the insurance company cannot be fastened with liability in the absence of any fitness certificate. However the Insurance Company is directed to pay and recover the amount in the very same execution proceedings.

11. The award passed by the Tribunal dated 14.09.2013 in M.C.O.P.No.168 of 2012 is hereby confirmed with a modification that the Insurance Company shall deposit the amount and recover the same from the owner of the vehicle. No costs. Consequently, connected M.P is closed.

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Index : Yes / No
Speaking Order : Yes / No
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1. The Motor Accident Claims Tribunal,
The Principal District Judge, Ariyalur.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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RMT.TEEKAA RAMAN, J.,

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