



C.M.A.No.3623 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 01.11.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3623 of 2014

and

M.P.No.1 of 2014

United India Insurance Company Limited,
13A, Nethaji Road,
Manjakuppam,
Cuddalore.

... Appellant/2nd respondent

Vs.

1.S.Ponnusamy

...Respondent/Petitioner

2.N.Murugan

...Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 23.06.2014 in M.C.O.P.No.760 of 2006 on the file of the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Cuddalore.



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For Appellant : Mr.S.Arun Kumar

For Respondents : Ms.Ramya V. Rao for R1

R2 – served – No appearance

JUDGMENT

The Insurance Company has preferred the above appeal challenging the Award passed by the II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Cuddalore, M.C.O.P.No.760 of 2006 on the ground that the Insurance Company is not liable to compensate the petitioner since the petitioner was an unauthorised passenger.

2.It is the case of the petitioner that on 05.02.2006, the petitioner was travelling in the 1st respondent's tractor, bearing Registration No.TN 46C 9921. The driver of the Tractor had driven the same in a rash and negligent manner without following the traffic



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rules as a result of which, the petitioner was thrown out of the vehicle and run over by the Tractor. This resulted in him sustaining grievous injuries. The petitioner would contend that immediately, he had been admitted in the Government Hospital at Cuddalore and thereafter, he was taking treatment in a Private hospital.

3.The Insurance Company has filed a counter *inter lia* contending that they are not liable to compensate the petitioner since the petitioner is an unauthorised passenger. Despite the defence, the Tribunal had gone onto fasten the liability on the Insurance Company and passed an Award for a sum of Rs.1,67,480/- with interest @7.5% per annum. Challenging the same, the Insurance Company is before this Court.

4.Heard the learned counsels appearing on either side and perused the papers.



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5. Even as per the contention of the petitioner, he had been travelling in the tractor in which only a driver is permitted to travel as the tractor is a single seater. Therefore, the petitioner who travelled along with the driver is an unauthorised passenger. The Tribunal has glossed over the counter filed by the Insurance Company and contended that the Insurance Company should pay the compensation and recover the same from the insurer and in this regard had relied upon the Judgment of this Court in **Ravunammal and another v. Sambandham and others [2008 ACJ 974]**.

6. The learned counsel for the appellant/Insurance Company has relied upon a Judgment of this Court in the case of **ICICI Lombard General Insurance Company Limited, Salem v. Velmurugan and others in C.M.A.No.653 of 2013**.



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7. Admittedly, the Tractor is a single seater in which only the driver could be seated. Therefore, the contention of the Insurance Company that the deceased was an unauthorised passenger stands proved. The insurance policy further makes it very clear that the liability is limited to IMT 30 and it is only the driver who is covered as per endorsement in IMT 28.

8. Therefore, the Award passed by the Tribunal fastening the liability on the Insurance Company is liable to be set aside. Consequently, the Civil Miscellaneous Appeal is allowed and the Award passed in M.C.O.P.No.760 of 2006 on the file of the learned II Additional Subordinate Judge, Motor Accidents Claims Tribunal, Cuddalore, is set aside. In case the petitioner has already withdrawn the amount deposited then it is open to the appellant/Insurance



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Company to recover the same from the 2nd respondent Mr.N.Murugan without resorting to the separate proceedings by filing execution proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

01.11.2022

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps

To

The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Cuddalore.



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P.T. ASHA, J,

mps

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