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C.M.A.No.2991 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2991 of 2017

P.Prasanth

... Appellant

VS.

1.K.Amudha

2.The New India Assurance Company Limited,
Represented by its Branch Manager,
No.39C, Bye-pass Road,
Dharmapuri Town & Taluk – 636 701.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree of the Motor Accident Claims Tribunal and Chief Judicial Magistrate Court at Dharmapuri, dated 08.09.2017 in M.C.O.P.No.419 of 2016.

For Appellant : Mr.K.Selvakumar

For Respondents : Mr.J.Chandran [R2]
R1 – Served – No Appearance



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JUDGMENT

The petitioner before the Motor Accident Claims Tribunal (Principal District Judge) Dharmapuri aggrieved by the Award passed in M.C.O.P.No.419 of 2016 is the appellant herein.

2. In the above claim petition, the Tribunal had passed an Award for a sum of Rs. 4,68,556/-, but however fastened the entire liability on the first respondent owner of the TATA ACE vehicle on the ground that the petitioner was an unauthorised passenger. Considering the limited issue in the above appeal, I do not intend to narrate the facts of the case. Suffice it to state that the appellant herein was travelling in a TATA ACE vehicle as a representative of the owner of the goods that was being carried in the vehicle, which belongs to the first respondent. The appellant had deposed that she was sitting along with the driver in the cabin of the vehicle and since the insurance policy was a package policy, the Tribunal below erred in holding that the appellant was a gratuitous passenger and that the second respondent-Insurance Company was not liable to indemnify the first respondent, owner of the TATA ACE.



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3. The learned counsel for the second respondent-Insurance

Company would submit that the appellant was travelling in the body of the vehicle along with the goods and was a gratuitous passenger. Therefore, the Award passed by the Tribunal is very much in order.

4. A perusal of Ex.P3, which is the Registration Certificate of the vehicle would clearly show that the seating capacity is two numbers. The second respondent-Insurance Company has not let in evidence to show that besides the driver and the appellant, there were some other persons, who were travelling in the vehicle, coupled with the fact that there is no denial to the statement made by the appellant in Column No.23 of the claim statement. The finding of the Tribunal that the appellant is a gratuitous passenger has to necessarily be set aside. Further, Ex.A4-Insurance Policy is the package policy and covers third party risk.

5. Therefore, in view of the above, the Award passed by the Tribunal inasmuch as the entire liability fastened on the first respondent is set aside and the second respondent-Insurance Company as the insurer of the first respondent shall deposit the entire Award amount of Rs.4,68,556/- to



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the credit of M.C.O.P.No.419 of 2016 together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the amount as awarded by the Tribunal along with interest and costs, as apportioned by the Tribunal, after adjusting the amount if any already withdrawn. If any amount is deposited by the first respondent as directed by the Tribunal, the same shall be withdrawn by the first respondent. In other respects, the Award of the Tribunal is hereby confirmed. In the above circumstances, the appeal is partly allowed. There shall be no order as to costs in the present appeal.

07.09.2022

Index : Yes / No
Speaking Order : Yes / No
srn

To

1. The Motor Accident Claims Tribunal
and Chief Judicial Magistrate Court,
Dharmapuri,
2. The Section Officer,
V.R.Section, High Court of Madras.

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P.T.ASHA, J.,

srn

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