



C.M.A.No.887 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.887 of 2013

and

M.P.No.1 of 2013

United India Insurance Company Ltd.,
No.76, Main Road,
Kalappa Naicken Patti Post,
Namakkal.

... Appellant/2nd respondent

Vs.

1.Suresh
2. Murugesan
[R2 remained ex-parte before Tribunal.
Hence, notice to R2 dispensed with]

... Respondent/Petitioner

... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 07.10.2005, made in M.A.C.T.O.P.No.602 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.3, Namakkal.

For Appellant	:	Mr.K.Suryanarayanan
For R1	:	Mr. C. Thangarasu
For R2	:	Dismissed as per Order dated 13.02.2023



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award passed in M.C.O.P.No.602 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.3, Namakkal.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The claimants filed three M.C.O.P.Nos.600, 602 and 611 of 2004, claiming a sum of Rs.3,00,000/- respectively, for the injuries sustained by them in the road accident that took place on 22.02.2004.

4. The case of the claimants that on 22.02.2004 at about 15.00 hours, a mini Auto bearing Registration No.TN 45 C 6715 was capsized near Kaaravalli Check post, in which, the claimants travelled as labourers, due to rash and negligent driving of the driver of the mini Auto. The claimant sustained severe injuries all over his body and he was admitted into



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Vigneswara Hospital, Senthamangalam and thereafter, he was admitted into C.M.Hospital, Namakkal for further treatment as in-patient for 10 days. He filed Claim Petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the road accident.

5. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Mini Auto belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.16,000/-, Rs.16,000/- and Rs.98,000/- respectively as compensation to the petitioners by the common award passed in M.C.O.P.Nos.600, 602 and 611 of 2004.

6. Aggrieved over the above said finding in M.C.O.P.No.602 of 2004, the second respondent/Insurance Company has come out with the present appeal seeking to set aside the same, on the ground that there is a violation of policy condition.



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7. It is submitted by Mr. K. Suryanarayanan, learned counsel

for the Insurance Company that three persons have travelled in the mini auto which was capsized and the claimants are unauthorized passengers, hence the Insurance Company is not liable to indemnify the owner of the vehicle. It is the evidence of the claimant who was examined as P.W.4, that he was working as a coolie under one Murugesan-owner of the vehicle and one Raja. For the purpose of digging well, on the date of occurrence, the said Murugesan has engaged Mini Auto, bearing Registration No.TN 45 C 6715 for the purpose of transporting Oil Engine which is used for the purpose of digging well. Accordingly, they all have jointly proceeded in the said vehicle which is meant for transporting goods, which is a clear violation of policy condition.

8. The learned counsel appearing for the first respondent contended that there is no violation of policy condition and premium has been paid for the load man. Ex.R1-Insurance Policy it shows that premium has been paid for the driver and also to the employee.



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9. Admittedly, auto was engaged for the purpose of transporting oil engine and subsequently met with accident. Since there is coverage for the load men, the claimant herein is covered by the Insurance Policy. However, apart from the claimant, other persons have also been transported in the auto they have also filed Claim Petition for the injuries sustained. This shows that, more number of persons travelled in the mini auto than the permitted capacity and there is a violation of policy condition. Since violation herein is permitting more persons to travel than the authorized capacity, and the fact, that the compensation amount involved in this case is only Rs.16,000/-, this Court is of the view that adopting the principle of pay and recover would be appropriate in this case.

10. For the reason stated above, the Civil Miscellaneous Appeal is allowed and the amount awarded by the Tribunal at Rs.16,000/- along with interest and costs is hereby confirmed. The appellant/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of three weeks from the date of receipt of a copy of this judgment to the credit of



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M.C.O.P.No.602 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Judge cum Fast Track Court No.III, Namakkal, at the first instance and recover the same from the second respondent/owner of the vehicle. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

06.07.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Additional District Judge,
Fast Track Court No.3,
Motor Accidents Claims Tribunal, Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.



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K.RAJASEKAR,J.

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