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C.M.A.No.285 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.285 of 2021

and

C.M.P.No.1899 of 2021

The Manager,
M/s.United India Insurance Co. Ltd.,
Mettur Taluk, Salem District.

...Appellant

Vs.

1.P.Dineshkumar

2.S.Selvakumar

3.D.Kavitha

4.Manager,
HDFC ERGO General Insurance Co. Ltd.,
Empire Arcade, 356/1,
Omalur Main Road, New Bus Stand,
Salem – 636 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.02.2020 made in M.C.O.P.No.448 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge (MACT), Krishnagiri.



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For Appellant : Mr.S.Arun Kumar
For Respondents : Mr.M.B.Raghavan for

M/s.M.B.Gopalan Associates for R4

R1 to R3 – served – No Appearance

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The appeal is by the Insurance Company, aggrieved by the award of the Motor Accident Claims Tribunal, Krishnagiri, granting a sum of Rs.29,75,128/- as compensation for the injury caused to the 1st respondent herein in a motor accident that took place on 06.04.2017. The claimants sought for a compensation of Rs.82,00,000/- for the injuries suffered by him, contending that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Registration No.TN-52-Y-5172 in which he was travelling as the owner of the goods.

2.The claim was resisted by the Insurance Company primarily contending that the injured was a gratuitous passenger and he was not travelling in the lorry as the owner of the goods. Considerable reliance was



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placed on the First Information Report and the evidence of the driver of the lorry, who was examined as R.W.1. The Tribunal, on appreciation of the evidence came to the conclusion that the injured was in fact a gratuitous passenger. The Tribunal however, directed the Insurance Company to pay compensation and recover the same from the owner.

3.We have heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.M.B.Raghavan, learned counsel appearing for the 4th respondent. Despite service, respondents 1 to 3 are not appearing either in person or through counsel.

4.Mr.S.Arunkumar would vehemently contend that having found that the injured is a gratuitous passenger, the Tribunal erred in directing it to pay the compensation with liberty to recover from the owner of the vehicle. He would place reliance on the judgment of this Court in Bharati AXA General Insurance Co. Ltd., Vs. Aandi and others reported in **2018 (2) TN MAC 731**, to which one of us (Mr.Justice R.Subramanian) was a party. In the said judgment, it has been held that the passenger in the goods vehicle is



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an unauthorized passenger and he will not be covered by the policy of Insurance, therefore, the Insurance Company cannot be directed to pay the compensation with liberty to recover from the owner. The conclusion arrived at by the Division Bench is to the effect that it is the owner, who alone would be liable in such cases.

5.In view of the above pronouncement, the appeal will have to be allowed and it is accordingly, allowed. The award of the Tribunal is modified and the Insurance Company is exonerated from the liability and the award of the Tribunal will be against the owner of the lorry namely, the 2nd respondent in this appeal. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (S.S.K.,J.)
20.01.2023

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Internet:Yes
Index:No
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WEB COPY To:-

The Motor Accident Claims Tribunal,
Special Sub-Court,
Krishnagiri.



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R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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