



CMA.No.3343 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

PRONOUNCED ON : 05 .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

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The Branch Manager
New India Assurance Company Limited
Kumbakonam

Appellant

Vs

1. S.Kasinathan
2. Ganesamoorthy
Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.04.2017, made in MCOP.No.324 of 2013, by the Additional Subordinate Judge (MACT) Mayiladudhurai, Nagapattinam District.

Respondents

For Appellant : Mr.J.Chandran

For Respondents : 1st Respondent and 2-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.04.2017, made in MCOP.No.324 of 2013, by the Additional Subordinate Judge (MACT) Mayiladudhurai, Nagapattinam District.
2. The 1st Respondent has filed the claim petition before the Tribunal, seeking a compensation of Rs.5,00,000/- on various heads, for the injuries sustained by her in a motor road accident, which took place on 26.09.2011. The claim



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petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. The 2nd Respondent, owner of the offending vehicle remained exparte. On the side of the claimant, PW.1 was examined and Ex.P1 to Ex.P6 were marked. On the side of the Insurance Company, Ex.R1 was marked and RW.1 was examined.

3. Finding that the accident had occurred due to the rash and negligent driving of the driver of the offending vehicle, belonging to the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.2,48,350/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Disability	180000.00
2	Pain and Suffering	25000.00
3	Extra Nourishment	10000.00
4	Transportation Expenses	5000.00
5	Loss of Income	15000.00
6	Medical Expenses	13350.00
Total Compensation		248350.00

Aggrieved by the same, this appeal has been filed by the Appellant Insurance Company.

4. This Court heard the learned counsel for the Appellant and also perused the entire materials placed on record.
5. According to the learned counsel for the Appellant, since the claimant was a gratuitous passenger or unauthorised passenger in a goods vehicle and the category of such person is not covered by the policy, the Appellant ought to



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have been exonerated from the liability.

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6. Since there is no quarrel over the negligence aspect and the quantum of compensation and the Appellant Insurance Company has disputed the impugned judgement, only with regard to liability, the finding of the Tribunal with respect to the negligence aspect and quantum of compensation is confirmed.
7. As per Ex.P1 First Information Report, the Tribunal found that on the date of the accident, the injured claimant along with others, were travelling in a TATA ACE Goods Carrier Vehicle, which met with the accident. Hence, the claimant can be categorised as an unauthorised passenger or gratuitous passenger. The category of such passengers is not covered by the policy. The 2nd Respondent is the owner of the said Good Vehicle.
8. In **2018 2 Tamil Nadu TNMAC 731 DB (Bharati AXA General Insurance Company Limited Vs. Aandi and others)**, in similar circumstances, it was held that the Tribunal was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner and that there will be an award only against the owner of the vehicle.
9. Applying the ratio laid down by the Division Bench of this Court in the decision cited above to the case on hand, this Court is of the view that the Tribunal erred in fixing the liability on the Appellant Insurance Company.
10. In the result, this appeal stands allowed only in respect of the question of



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liability of the Appellant Insurance Company to pay the compensation. The quantum of compensation is confirmed and there will be an award only against the owner of the offending vehicle, namely, the 2nd Respondent and

A.A.NAKKIRAN, J.

Srcm

the impugned judgement and decree award against the Appellant Insurance Company is set aside. No costs.

05.06.2023

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Additional Subordinate Judge (MACT) Mayiladudhurai, Nagapattinam District.
2. The Record Keeper, VR Section, High Court, Madras

Pre-Delivery Judgement in
CMA.No.3343 of 2017