



*C.M.A.No.2397 of 2018 and
C.M.P.No.18235 of 2018*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**C.M.A.No.2397 of 2018 and
C.M.P.No.18235 of 2018**

Shriram General Insurance Co. Ltd.,
Represented by its Branch Manager,
Branch office
E8, RIICO Industrial Area, Sitapura,
Jaipur, Rajasthan – 302 022.

...Appellant

Vs.

1. Anandan
2. M.Mahendiran

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 07.10.2017 made in M.C.O.P.No.193 of 2015 by the learned Motor Accident Claims Tribunal, Krishnagiri, Additional Special Judge, Krishnagiri.

For Appellant : Mr.S.Dhakshnamoorthy
For Respondents : No Appearance



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JUDGMENT

This appeal is filed challenging the fair and decretal order dated 07.10.2017 made in M.C.O.P.No.193 of 2015 by the learned Motor Accident Claims Tribunal, Krishnagiri, Additional Special Judge, Krishnagiri.

2 The appellant is the Insurance Company, first respondent is claimant and second respondent is owner of the vehicle.

3 The first respondent/claimant filed a claim petition in M.C.O.P.No.193 of 2015 before the Tribunal claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident that occurred on 12.11.2011 while he was engaging in the work of loading and unloading the Cabbage Goods in the Lorry bearing Reg.No.TN 24 F 4890 belonging to the first respondent, which was insured with the appellant.

4 The claim petition was contested by the appellant/Insurance Company and they filed detailed counter denying all the allegations apart from disputing the liability.



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5 Before the Tribunal, on the side of the first respondent/claimant P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the appellant/Insurance Company, no oral and documentary evidence was produced.

6 The Tribunal, on an assessment of entire evidence on record, fixed liability on the appellant/Insurance Company and awarded a sum of Rs.2,13,700/- as compensation along with 7.5% interest and directed the appellant/Insurance Company to pay the award amount. Challenging the liability, the Insurance Company has filed the present appeal.

7 Learned counsel appearing for the appellant/Insurance Company would submit that the insured vehicle is EICHER Mini Lorry bearing Reg.No.TN 24 F 4890. Even though the claimant claimed that he was travelling in the Lorry as Cooli, but, they have not established the same and the Tribunal has also not discussed whether the claimant was travelling as Cooli or unauthorised passenger. The FIR itself shows that eight persons were traveling in the vehicle at the time of accident. It is to be noted that seating capacity of the



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vehicle is 1 + 1 and the vehicle was insured only for Driver and another one and not other persons or occupant of the vehicle. Even the claimant himself stated that at the time of accident eight persons were occupying the vehicle, which is clear violation of policy condition and the appellant/Insurance Company is not liable to pay the compensation to those occupants.

7.1 Learned counsel further contended that the Tribunal has failed to consider the FIR and the evidence of P.W.1 the claimant, in which it is proved that at the time of accident, 8 persons were traveling in the vehicle and the Tribunal has failed to discuss anything about the liability as to whether the insurer is liable to pay the compensation to the occupant, who was not covered under the policy. Therefore, the order passed by the Tribunal warrants interference of this Court and the appellant has to be exonerated from the liability.

8 In spite of service of notice and the names of the respondents are being printed in the cause list, none appeared on behalf of the respondents.

9 Heard the learned counsel appearing for the appellant and perused



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the materials available on record.

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10 A bare reading of the evidence of P.W.1, reveal that he has clearly admitted that at the time of accident eight persons were traveling in the offending vehicle and in the FIR also the it is stated that he was sitting in the cabin of the Driver and two other persons were sitting in the cabin and five persons were traveling on the top of the vehicle, which clearly shows that the insurance policy did not cover those persons.

11 The Tribunal has not discussed anything about the seating capacity of the offending vehicle and liability of the appellant/Insurance Company as to whether the insurer is liable to pay the compensation even though there is violation of policy condition. According to the appellant/Insurance Company, the claimant is only occupant, who does not come under the nomenclature of Cooli. The Tribunal has failed to discuss and give finding as to whether the claimant was traveling as Cooli or cleaner or he was covered under the insurance policy. The policy shows that seating capacity of the offending vehicle is only two and premium paid to one Driver and one another person i.e. 1+1.

12 In view of the above, this Court finds that the appellant/Insurance



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Company is not liable to pay any compensation to the injured claimant, since insurance policy does not cover the claimant. Hence this Court is inclined to set aside the order of the Tribunal insofar as fixing the liability on the appellant/Insurance Company.

13 Accordingly the Civil Miscellaneous Appeal is allowed and the appellant/Insurance Company is exonerated from the liability and the appellant is also permitted to withdraw the award amount deposited, if any. The first respondent/claimant can recover the award amount from the second respondent/owner of the offending vehicle. Connected miscellaneous petition is also closed. There shall be no order as to costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The Motor Accident Claims Tribunal, Krishnagiri,
Additional Special Judge, Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.



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P.VELMURUGAN. J.,

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