



C.M.A.(MD).No.300 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.300 of 2009

The New India Assurance Company Ltd.,
67-A Periyakulam Road,
Theni Town,
Theni District.
(Through its Branch Manager)

..... Appellant/ 2nd Respondent

-VS-

1. P.Ganapathi
2. G.Banumathi
3. P.Ravichandran

.... Respondents 1 and 2/Petitioners 1 & 2
.... Respondent 3 / Respondent 1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 29.08.2008 and made in M.C.O.P No.248 of 2006 on the file of the Motor Accidents Claims Tribunal, District Judge, Sivagangai.

For Appellant : Mr.K.Murugesan

For Respondents : Mr.A.Shajahan for R1 and R2
for R3- dismissed



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J U D G M E N T

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The present appeal has been filed by the Insurance Company challenging the Award of the Motor Accidents Claims Tribunal on the ground of liability.

2. According to the claim petition, the daughter of the claim petitioners namely, Anitha, who was aged about 5 years old was studying in the first standard. While she was standing on the corner of the road, the vehicle viz., Mahendra Van belonging to the first respondent was driven in a rash and negligent manner and dashed against the said Anitha and she passed away on the spot. Hence, the parents have prayed for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

3. The owner of the vehicle had remained ex-parte and the Insurance Company had filed a counter contending that the accident has happened only due to the negligence on the part of the deceased. Further the Insurance Company had contended that the driver of the van was not having a badge, and he was having only LMV license at the time of accident. Therefore, they



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have contended that they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving of the vehicle belonging to the first respondent. The Tribunal further found that the driver of the offending vehicle was not having a valid driving license to drive the passenger vehicle and he was having only LMV driving license. On the basis of the above said findings, the Tribunal came to the conclusion that the Insurance Company is liable to pay the compensation and thereafter, recover the same from the owner of the vehicle. After considering the submissions of the claimants, the claimants were awarded a sum of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) as total compensation. This award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant /Insurance Company had contended that at the time of accident, the driver of the offending vehicle was not having a badge but he was only having a LMV license. Therefore,



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there is a violation of policy condition and the Tribunal ought not to have awarded pay and recovery but it should have exonerated the Insurance Company and they should have mulcted the liability on the owner of the vehicle.

6. Per contra, the learned counsel appearing for the claimants had contended that since there is violation of the policy condition, the award of the Tribunal relating to pay and recovery is legally sustainable. Badge is essential only for the vehicles which have above the weight of 7500 Kg. The vehicle being a Mahendra Van does not require batch at all. Therefore, the award of the Tribunal does not require any interference.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. The Tribunal, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the first respondent in the claim petition. It could be seen from the discussion of the



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Tribunal that the girl was aged about five years old standing in the corner of the road and due to the negligence on the part of the first respondent, the accident has happened and girl had passed away. The Tribunal arrived at a finding that due to non holding of the endorsement, there is violation of policy condition and awarded the pay and recovery. The learned counsel appearing for the respondents 1 and 2 had relied upon the judgment of the Hon'ble Supreme Court reported in **2017 14 SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)** wherein the Hon'ble Supreme Court has held that endorsement in respect of the LMV vehicle is not required. However, the owner of the vehicle has not chosen to challenge the award of pay and recovery. Therefore, this Court does not find any reason to interfere with the award of the pay and recovery.

9. Considering the fact that the five years old girl has passed away, this Court does not find any reason to interfere in the quantum of Rs.2,25,000/- (Rupees Two Laks and Twenty Five Thousand only) awarded by the Tribunal.



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10. In view of the above said deliberations, this Civil Miscellaneous Appeal lacks merits and the same stands dismissed. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal,
District Judge, Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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