



C.M.A.(MD).No.361 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.361 of 2010

The National Insurance Company Limited,
Represented by its Divisional Manager,
T.S.No.4132, East Main Road,
Pudukottai.

... Appellant/2nd Respondent

-vs-

1. Asaithambi
2. C.Nagarajan

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree, dated 30.09.2008, made in M.C.O.P.No.249 of 2006, on the file of the Motor Accidents Claims Tribunal/ Sub-Judge, Kulithalai.

For Appellant : Mr.A.Ilango

For Respondents : Mr.P.Arun Jayatram – for R2
: No appearance- for R1

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims



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Tribunal/Sub-Judge, Kulithalai, made in M.C.O.P.No.249 of 2006 primarily on the ground of liability.

2. According to the claimant, he had travelled in a goods carriage along with the owner of the goods on 13.04.2006. Due to the rash and negligent driving on the part of the driver of the said goods carriage, he was thrown away and he had sustained grievous injuries. Hence, he filed a claim petition seeking a compensation of a sum of Rs.4,00,000/- (Rupees Four Lakhs only).

3. The owner of the said goods carriage had remained ex-parte and the Insurance Company had filed a counter contending that due to tyre burst, the driver attempted to stop the vehicle but the claimant had suddenly jumped from the Van and fell down from the Van and sustained injuries. The Insurance Company further contended that the vehicle being a load vehicle, no person can travel as a passenger. In the load vehicle, the claimant has travelled on the back side of the Van where the vessels have been loaded. Hence, there is a violation of the policy condition and they are not liable to pay any compensation.



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4. The Tribunal, after hearing both the parties has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the goods carriage. The Tribunal further found that the claimant has sustained 20 % disability and has awarded a sum of Rs. 46,500/- (Rupees Forty Six Thousand and Five Hundred only) as compensation. As far as the plea of the Insurance Company that the claimant has travelled in the goods carriage is concerned, the Tribunal arrived at a finding that being owner of the goods, the claimant was entitled to travel along with the goods and is covered under the policy. Challenging the said award, the present appeal has been filed by the Insurance Company.

5. The learned counsel appearing for the appellant had contended that the claimant who is the owner of the goods could not travel along with the goods and he can travel only inside the cabin. Therefore, the Insurance Company is not liable to pay any compensation.

6. Per contra, the learned counsel appearing for the respondent had contended that the Tamil Nadu Motor Vehicles Rules do not totally prohibit traveling of the any person at all and only restricts the height of the passenger not to exceed 300 cms., from the road level when they are in sitting position.



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Therefore, the burden is upon the Insurance Company to establish the fact that while sitting on the back side of the vehicle, the claimant had exceeded 300 cms., When they are no pleadings or evidence on the said aspect, the said contention cannot be accepted.

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

8. A perusal of the deposition of the injured claimant indicates that he had travelled on the back side of the goods carriage along with goods. However, as rightly contended by the learned counsel appearing for the second respondent, the burden is upon the Insurance company to establish that the sitting position of the claimant had exceeded 300 cms., from the road level. The burden is upon the Insurance Company and they have not established the same. This court does not find any reason to interfere with the award passed by the Tribunal either with regard to the liability or with regard to the quantum and there are no merits in the appeal.



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9. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no orders 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/ Sub-Judge,
Kulithalai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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