



C.M.A(MD)No.931 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.931 of 2009
and
Cros.Obj(MD)No.30 of 2010
and
M.P(MD)No.1 of 2009

C.M.A(MD)No.931 of 2009:

United India Insurance Company Ltd.,
Branch Manager,
Branch Office-II,
3-E, Balavinayagar Kovil Street,
Tuticorin.

... Appellant/2nd Respondent

Vs.

- 1.Chellamal
- 2.Muthukaruppan (A) Velayutham
- 3.Rajendran
- 4.Rajammal
- 5.Sudalaimuthu (A) Durai
- 6.Vaikundaramasamy (A) Kumar
- 7.Jeya
- 8.Alaguramakrishnan

... Respondents/1st Respondent&
Petitioners 1-7



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9. IRDA (Insurance Regulatory Development Authority),

Parisrame Bhavan,
Basheer Bagh, Hyderabad,
Telangana District.

... Respondent

*(R9 suo moto impleaded vide Court order, dated
23.12.2016 in C.M.A(MD)No.931 of 2009)*

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to call for the records of the lower Court and consider the merits of the case and to set aside the award passed by the tribunal in M.C.O.P.No.412 of 1997, dated 03.02.2006.

For Appellant : Mr.P.Jaganathan

For R1-R7 : Mr.T.Selvakumaran

For R8 & R9 : No Appearance

Cros.Obj(MD)No.30 of 2010:

1.Chellamal

2.Muthukaruppan (A) Velayutham

3.Rajendran

4.Rajammal

5.Sudalaimuthu (A) Durai

6.Vaikundaramasamy (A) Kumar

7.Jeya

... Cross Objectors/Respondents



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1.United India Insurance Company Ltd.,
Branch Manager,
Branch Office-II,
3-E, Balavinayagar Kovil Street,
Tuticorin.

2.Alaguramakrishnan ... Respondents/Respondents

3.IRDA (Insurance Regulatory Development
Authority),
Parisrame Bhavan,
Basheer Bagh, Hyderabad,
Telangana District. ... Respondent

*(R3 suo moto impleaded vide Court order, dated
23.12.2016 in Cros.Obj(MD)No.30 of 2010)*

PRAYER: Cross Objection is filed under Order 41 Rule 22 of Code of Civil Procedure, against the order and decree, dated 03.02.2006 of the learned Motor Accident Claims Tribunal (Additional Sessions Judge), Tuticorin in M.C.O.P.No.412 of 1997.

For Appellants : Mr.T.Selvakumaran

For R1 : Mr.P.Jaganathan

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Tuticorin in M.C.O.P.No.412 of 1997 primarily on the ground of



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2. According to the claimants, the deceased was an occupant in a trekker and he was travelling from Rajapalayam to Tirunelveli. At the said point of time, the driver of the said trekker car had driven the vehicle in a rash and negligence manner and it got capsized. In the said accident, the deceased succumbed to the injuries and thereafter, passed away. The claimants have prayed for a sum of Rs.2,00,000/- as compensation.

3. The insurance company had filed a counter disputing the manner of accident, negligence and quantum of the award. The insurance company had filed an additional counter contending that it is a private car policy, but the vehicle has been taken by the deceased on hire. Therefore, there is clear violation of policy conditions. Hence, they have prayed for dismissal of the claim petition.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the driver of the trekker car was solely responsible for the accident. The tribunal further considered the defence raised by the insurance company with regard to the private car policy. The insurance company was not able to extract any admission from P.W.

1 or P.W.2 with regard to the fact that the vehicle was hired by the deceased and other occupants. The owner of the trekker car had



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examined himself as R.W.2. He has also denied the fact that the vehicle was given on hire to the deceased and his family members. In fact, in his deposition, he has specifically deposed that the deceased and other occupants of the car were his relatives and the vehicle was not given on hire. Based upon the said facts, the tribunal had rejected the defence of the insurance company and proceeded to mulct the liability upon the insurance company to pay a compensation of Rs.2,00,000/-. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, in the additional counter, the company has taken a specific stand that the vehicle was taken on hire by the deceased and other occupants of the car and therefore, it is a case of clear violation of policy conditions. He further contended that suggestions were put to P.W.1 and P.W.2 to the effect that the vehicle was taken on hire. The suggestions were also put to R.W.2 who was the owner of the vehicle to the effect that the vehicle was taken on hire. However, the said aspects have not been properly appreciated by the tribunal and it has proceeded to mulct the liability upon the insurance company. When there is a case of policy violation, the tribunal ought to have directed the insurance company to satisfy the award and it should have permitted the insurance company to recover the same from the owner of the vehicle.



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6. Per contra, the learned counsel for the respondents had contended that all the suggestions of the insurance company to P.W.1, P.W.2 and R.W.2 have been negatived by them in their cross-examination. In fact, the owner of the vehicle, namely the 1st respondent had claimed own damage for his vehicle from the insurance company. The company had honoured the same and paid the amount under Exhibit R.2. Therefore, they cannot take a different stand when compensation has been claimed by the occupants of the said car. Hence, he prayed for sustaining the award passed by the tribunal.

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

8. A perusal of the deposition of P.W.1, P.W.2 and R.W.2 clearly indicates that all of them have negatived the suggestions put forward by the insurance company with regard to the hiring of the vehicle at the relevant point of time. No other evidence has been placed on record by the insurance company to establish the fact that the vehicle was taken on hire by the deceased and his family members at the time of accident. The owner of the vehicle was examined as R.W.2, who has categorically contended that the deceased and the other occupants of the car were his relatives, who have taken the same for attending a function. Further, it



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could be seen that the trekker car got damaged in the said accident, for which the owner of the car had claimed own damage from their insurance company. The insurance company has honored the said claim and paid the amount under Exhibit R.2. In case, if there is a policy violation, the own damage claim would not have been honored by the insurance company. Having honored the claim for own damages to the owner of the vehicle, the insurance company cannot turn around and contend that they will not indemnify the owner with regard to the claim made by the third party. Therefore, there are no merits in the appeal. This appeal stands dismissed.

9. Cros.Obj(MD)No.30 of 2010 has been filed seeking to enhance the award passed by the tribunal.

10. The claimants have claimed a sum of Rs.2,00,000/- towards the death of the occupant of the private car. The tribunal has awarded a sum of Rs.74,000/-. Considering the fact that the deceased was 68 years old and he was a Poojari of a temple, this Court does not find any scope for enhancement of the compensation. Hence, the cross objection stands dismissed.



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11. C.M.A(MD)No.931 of 2009 and Cros.Obj(MD)No.30 of 2010

stand dismissed. No costs. Consequently, connected Miscellaneous
Petition is closed.

28.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal
(Additional Sessions Judge),
Tuticorin.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.931 of 2009
and
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