



C.M.A. (MD) No. 174 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.08.2023

Pronounced on : 19.10.2023

CORAM:

THE HON'BLE MR. JUSTICE **K. MURALI SHANKAR**

C.M.A. (MD) No. 174 of 2019

ICICI Lombard General Insurance Company Limited,
having its office at ICICI Lombard House,
Mumbai,
Maharashtra – 400 025
through its Branch Manager

... Appellant/
Respondent No. 2

Vs.

1. K. Manimuthu

... 1st Respondent/
Petitioner

2. M. Muthukrishnan

... 2nd Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 24.08.2018 in M.C.O.P.No.124 of 2012 on the file of the Chief Judicial Magistrate Court cum Motor Accident Claims Tribunal, Pudukottai and allow the above Civil Miscellaneous Appeal.



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For Appellant : Mr.V.Muthukamatchi
For R1 : No appearance
For R2 : Mr.N.Balakrishnan

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.124 of 2012 dated 24.08.2018 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Pudukottai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.2,04,500/- (Rupees Two Lakhs Four Thousand and Five Hundred only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 01.09.2009 and then to recover the same from the second respondent/owner of the vehicle, challenged the liability mulcted on it and invoking of doctrine of pay and recovery.

For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.



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3. The case of the claimant is that on 01.09.2009, the claimant and some others proceeded in the first respondent's vehicle to Elambavayal and when the vehicle was going near Avadaiyarkovil to Okkur road, driver of the said vehicle drove the same rashly and negligently and at about 03.00 p.m., the vehicle got capsized, that the claimant sustained fractures and other injuries all over his body, that he was immediately taken to Kannan Hospital for treatment and that the accident was occurred only due to the rash and negligent driving of the first respondent's vehicle driver.

4. The defence of the second respondent is that the vehicle was temporarily registered for the period from 04.06.2009 to 04.07.2009, that the accident was alleged to have occurred on 01.09.2009, that there was no valid registration certificate on the date of accident, that 25 persons had travelled in the first respondent's vehicle for hire to attend catering work and due to the over loading, vehicle capsized near the road side, that the claimant is not a load man or owner of the goods and that since the first respondent had willingly violated the terms and conditions of the policy and the Motor Vehicles Act and its Rules, the second respondent is not liable for the claim.



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5. During trial, the claimant has examined himself as P.W.1 and one other witness as P.W.2 and exhibited 6 documents as Ex.P.1 to Ex.P.6. On the side of the respondents, four witnesses were examined as R.W.1 to R.W.4 and 4 documents came to be exhibited as Ex.R.1 to Ex.R.4.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 24.08.2018, by holding that the accident was occurred only due to the rash and negligent driving of the first respondent's vehicle driver and that since the first respondent has violated the policy conditions, directed the second respondent to pay compensation of Rs.2,04,500/- with interest and costs and then to recover the same from the first respondent. Aggrieved by the impugned award, the insurer has preferred the present appeal.

7. The learned counsel appearing for the second respondent would submit that the vehicle involved in the accident has no registration to ply the vehicle and the temporary registration obtained had already been lapsed, that the vehicle was not possessing permanent or temporary



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registration on the date of accident, that the claimant and others, who travelled in the said vehicle, are gratuitous passengers and as such, they are unauthorized persons and that therefore, the second respondent is not liable for the claim and as such, the impugned order invoking the doctrine of pay and recovery is liable to be set aside.

8. It is not in dispute that on the basis of the complaint lodged by one of the injured in the accident, FIR came to be registered in Crime No. 120 of 2009 for the alleged offences under Sections 279 and 337 IPC against the unregistered TATA ACE vehicle driver under Ex.P.3, wherein, it has been stated that as per the direction of the catering agent Subbaiah, the claimant and others to attend catering work for Mariamman Temple Kumbhabishekam travelled in the TATA ACE vehicle towards Elambavayal and when the vehicle was proceeding near Panniyur Vilakku road, while the driver was attempting to over take a pit, the vehicle got capsized and that the defacto complainant and others got injured. The claimant, in his chief examination affidavit, would specifically say that himself and some other persons travelled in the first respondent's vehicle towards Elambavayal for attending catering work. In cross-examination,



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he would admit that 25 persons had travelled in the vehicle for catering work and that they had taken the first respondent's vehicle for hire.

9. The second respondent has summoned and examined the driver of the vehicle as R.W.3. R.W.3, in his evidence, would say that he had taken catering vessels in the vehicle and that one person had accompanied with the vessels, that subsequently, four other cooks had joined with them and despite his objections, they had travelled in the vehicle. In cross-examination, he would deny the suggestion that 25 persons travelled in the vehicle at the time and he had alone permitted them to travel. He would admit that in the criminal case, he pleaded guilty and on that basis, fine was levied on him. The first respondent has examined himself as R.W.4. In chief examination, he would say that the driver had taken catering vessels in the vehicle and one person had accompanied with the vessels and that when four persons were attempting to board the vehicle, the same was objected by the driver, but the above persons by threatening the driver with knife, had boarded the vehicle and travelled. Admittedly, neither the driver nor the owner of the vehicle has preferred any complaint with regard to the alleged threatening. Though R.W.3 would say that they are



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duty bound to maintain trip sheet, they have not produced trip sheet with regard to the occurrence date.

10. As rightly pointed out by the learned counsel appearing for the second respondent, it is not the case of the claimant that catering vessels were taken in the first respondent's vehicle at the time of accident and that he had accompanied the vessels. It is also not the case of the claimant that he was employed under the first respondent. Considering the evidence available on record, it is clearly evident that the vehicle was taken on hire for taking the claimant and others to Elambavayal for catering contract work and that the claimant and others had travelled in the goods vehicle as unauthorized/gratuitous passengers.

11. The second respondent has examined the motor vehicle inspector attached to the Regional Transport Office, Aranthangi as R.W.1 and he would say that the vehicle of the first respondent was given permanent registration on 08.12.2009, that the said vehicle was temporarily registered on 04.06.2009 and that the vehicle was not possessing valid registration on 01.09.2009 on the date of accident. It is



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evident from Ex.R.1 and Ex.R.2-registration certificates that the vehicle was registered temporarily on 04.07.2009 and subsequently permanent registration was made on 08.12.2009. As rightly contended by the learned counsel appearing for the second respondent, it is clearly evident from the evidence of R.W.1 and Ex.R.1 and Ex.R.2 that the vehicle was not having valid registration certificate on the date of accident.

12. In the case of ***Bharti Axa General Insurance Company Ltd, Vs. Aandi and others*** reported in ***(2018) 2 TNMAC 731***, a Division Bench of this Court following the ratio laid down by the Hon'ble Supreme Court in ***New India Assurance C. Ltd. Vs. Asha Rani*** reported in ***(2001) ACC 479*** and ***National Insurance Co. Ltd. Vs. Baljit Kaur*** reported in ***(2004) ACC 259***, has specifically held that when there is no coverage for the injured or deceased who was only a gratuitous passenger and for said violation, the insurance company cannot be fastened with the liability to pay compensation and then to recover the same from the owner of the vehicle.

13. The learned counsel appearing for the claimant has relied on the judgment of the Hon'ble Supreme Court in ***Anu Bhanvara, etc and others***



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Vs. Iffco Tokio General Insurance Co. Ltd. and others reported in 2019

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(2) *TN MAC 433*, wherein, the Hon'ble Apex Court, taking note of the fact that the claimants in that case are young children, who have suffered permanent disability on account of the injuries sustained in the accident and keeping in view the peculiar facts and circumstances of that case, has decided to apply the principle of pay and recover. Hence, the above decision cannot be applied to the case on hand.

14. As already pointed out, the first respondent, by allowing the gratuitous passengers to travel in the vehicle, has violated the terms and conditions of the insurance policy and also the provisions of the Motor Vehicles Act and Rules made therein. Hence, this Court has no hesitation to hold that the doctrine of pay and recovery has no application to the case on hand and the impugned order directing the second respondent to pay the compensation and then to recover the same from the first respondent is liable to be set aside.

15. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



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16. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order dated 24.08.2018 passed in M.C.O.P.No.124 of 2012 mulcting liability on the appellant/insurer to pay compensation and then to recover the same from the second respondent/owner of the vehicle is set aside. The appellant/insurer is permitted to withdraw the amount, if any amount already deposited. In case, if the first respondent/claimant has already withdrawn any amount deposited by the appellant/insurer, the appellant/insurer is permitted to recover the same from the second respondent/owner of the vehicle. Parties are directed to bear their own costs.

19.10.2023

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

To:

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Pudukottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.174 of 2019

Dated :19.10.2023