



C.M.A.(MD).Nos.462 and 463 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.462 and 463 of 2018

C.M.A(MD) No.462 of 2018:

The Branch Manager,
M/s. The Oriental Insurance Company Ltd.,
3rd Floor, Technopolish – 10-44,
Chikoti Gardens, Begumpet,
Hyderabad,
Andhra Pradesh- 500016,
Represented by its TN Divisional Office,
M/S. The Oriental Insurance Company Ltd.,
TP-Hub, 16, North Veli Street,
Madurai – 1.

... Appellant/3rd Respondent

-vs-

1. B.Palanichamy Naicker
2. K.Vadivel
3. K.Velmurugan
(2nd and 3rd respondents remained ex-parte
before the Lower Court)

... 1st Respondent/Petitioner
... 2nd Respondent/ 1st Respondent
... 3rd Respondent/ 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.118 of 2013, dated 11.12.2017, on the file of the Motor Accidents Claims Tribunal-cum-Special Sub Judge, Dindigul.



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C.M.A.(MD).Nos.462 and 463 of 2018

For Appellant : Mr.C.Karthik

For Respondents : Mr.T.Vadivelan – for R1

C.M.A(MD) No.463 of 2018:

The Branch Manager,
M/s. The Oriental Insurance Company Ltd.,
3rd Floor, Technopolish – 10-44,
Chikoti Gardens, Begumpet,
Hyderabad,
Andhra Pradesh- 500 016,
Represented by its TN Divisional Office,
M/S. The Oriental Insurance Company Ltd.,
TP-Hub, 16, North Veli Street,
Madurai – 1.

.....Appellant/3rd Respondent

-vs-

1. P.Radhamani	 1 st Respondent/Petitioner
2. K.Vadivel	 2 nd Respondent/ 1 st Respondent
3. K.Velmurugan	 3 rd Respondent/ 2 nd Respondent
(2 nd and 3 rd respondents remained ex-parte before the Lower Court)	

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award made in M.C.O.P.No.119 of 2013, dated 11.12.2017, on the file of the Motor Accidents Claims Tribunal-cum-Special Sub Judge, Dindigul.



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C.M.A.(MD).Nos.462 and 463 of 2018

For Appellant : Mr.C.Karthik

For Respondents : Mr.T.Vadivelan – for R1
: Mr.M.Jothi Basu – for R2 and R3

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals have been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal-cum-Special Sub Judge, Dindigul in M.C.O.P.Nos.118 and 119 of 2013.

2. According to the claimants, they have travelled in a Tata Ace Vehicle on 04.12.2011 to attend the death ceremony of a relative. The driver of the said vehicle had driven the vehicle in a rash and negligent manner and the claimants were thrown away from the said goods vehicle and sustained injuries. Each one of the claimants had prayed for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards compensation for the injuries sustained by them in the said accident.



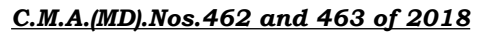
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3. The Insurance Company had filed a counter contending that the Tata Ace vehicle being a goods carriage and 22 persons have travelled in the said vehicle and therefore, it is a case of violation of policy condition and also the Motor Vehicle Rules. Therefore, the Insurance Company is not liable to pay any compensation whatsoever.

4. The Tribunal, after considering the oral and documentary evidence, 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 Tata Ace vehicle. However, the Tribunal had directed the driver, owner of the vehicle and also the Insurance Company to jointly and severally satisfy the award. This award is under challenge in the present appeals.

5. According to the learned counsel appearing for the appellant, the FIR has been lodged by the husband of one of the claimants. In the said F.I.R, it has been specifically stated that 22 persons were travelling as passengers in the goods carriage to attend a death ceremony. The same is also repeated in both the claim petitions. Therefore, it is clear that the claimants have travelled



6. Per contra, the learned counsel appearing for the claimants in both appeals had contended that the claimants who have travelled in the goods train can only be construed to be third parties to the contract of the insurance and therefore, the Insurance company is liable to pay the compensation towards injury or death of the said passengers. Hence, he prayed for sustaining the award passed by the Tribunal.

7. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

8. Admittedly, 22 persons have travelled in a Tata Ace Van on 04.12.2011 to attend the funeral ceremony of a relative. The said Van capsized due to the rash and negligent driving on the part of the Van driver. Some of the occupants of the goods carriage were thrown out of the vehicle



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and sustained injuries. The FIR and the claim petitions clearly indicate that the claimants have travelled only as gratuitous passengers in a goods carriage and they have not claimed themselves to be the loadmen or owner of the goods.

9. The learned counsel appearing for the appellants had relied upon the judgment of the Hon'ble Division Bench of this Court reported in **2018 (2) TANMAC 731 (Bharati Axa General Insurance Company Limited vs. Aandi and two others)** to the effect that as far as the unauthorised or gratuitous passengers in the goods vehicle are concerned, the insurer is not liable to pay any compensation and therefore, the insurer cannot be directed to pay and recover. In the present case, admittedly, both the claimants have travelled as gratuitous passengers in a goods carriage and therefore, the Tribunal was not right in mulcting the liability on the Insurance Company. The Tribunal was not right in mulcting the liability upon the appellant/Insurance Company.

10. In view of the above said deliberations, the award of the Tribunal in both the cases is set aside to the extent of exonerating the appellant/Insurance Company. In other respects, the award of the Tribunal stands confirmed. If the



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Insurance Company had deposited the award amount, if any, the same may be refunded to them along with accrued interest.

11. This Civil Miscellaneous Appeals stand partly allowed to the extent as stated above. There shall be no order as to costs.

19.06.2023

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

1. The Motor Accidents Claims Tribunal-cum-Special Sub Judge,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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