



C.M.A(MD)No.316 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.316 of 2017

and

C.M.P(MD)No.3646 of 2017

The Manager,
The New India Assurance Co.Ltd.,
Paramathi Road,
Namakkal,
Madurai District.

... Appellant/2nd Respondent

Vs.

1.Valli

... Respondent/Claimant

2.Jeganathan

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair and decretal order passed in M.C.O.P.No.18 of 2014 on the file of the Motor Accident claims Tribunal cum Principal Sub Court, Karur, dated 18.04.2016.

For Appellants : Mr.S.Sarvagan Prabhu

For R1 : Mr.M.P.Senthil

For R2 : No Appearance



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JUDGEMENT

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The present appeal has been filed by the insurance company challenging an award of the Motor accident Claims Tribunal, Karur in M.C.O.P.No.18 of 2014 primarily on the ground of liability.

2. The injured claimant had contended that she is an agricultural labour and while she was travelling along with her relatives in Tata Ace vehicle belonging to the 1st respondent, the same was driven in a rash and negligent manner and the vehicle rammed against a cement pillar and the vehicle got capsized. In the said accident, the claimant sustained grievous injuries and she prayed for a sum of Rs.15,00,000/- towards compensation from the owner and the insurance company of the said Tata Ace vehicle.

3. The owner of the Tata Ace vehicle had remained ex parte and the insurance company had filed a counter contending that the injured claimant had travelled in the 1st respondent's goods vehicle as an unauthorized / gratuitous passenger and therefore, they are not liable to pay any compensation.



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4. The tribunal after considering the oral and documentary evidence and also the deposition of P.W.1, had arrived at a finding that the injured claimant had travelled as a gratuitous passenger in the Tata Ace vehicle. After arriving at such a finding, the tribunal has proceeded to pass an award to a tune of Rs.4,51,749/- with a direction to the insurance company to satisfy the award and thereafter, recover the same from the owner of the vehicle. The said award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant had contended that the injured claimant had travelled as a gratuitous / unauthorized passenger on the goods vehicle belonging to the 1st respondent. The tribunal has also arrived at such a finding. After arriving at such a finding, the tribunal ought not to have passed an award directing the insurance company to satisfy the award amount and thereafter, recover the same from the owner of the vehicle. The learned counsel appearing for the appellant had relied upon a judgment of the Hon'ble Division Bench of our High Court **2018 (2) TN MAC 731 (Bharati AXA General Insurance Co.Ltd., Vs. Aandi & Others)** to impress upon the Court that as far as unauthorized / gratuitous passengers in goods vehicle are concerned, the insurer is not liable and therefore, there cannot be any



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direction for pay and recovery.

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6. Per contra, the learned counsel appearing for the respondent had contended that P.W.1 in her evidence has clearly stated that she had travelled with load of coconuts as an owner of the goods and therefore, when she has travelled as owner of the goods, she cannot be treated as an unauthorized passenger. Therefore, the award of pay and recovery may not be disturbed. He further contended that the insurance company has not produced any evidence whatsoever to the effect that the injured claimant had travelled as an unauthorized /gratuitous passenger in the vehicle.

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

8. It is not in dispute that the injured claimant had travelled in a Tata Ace vehicle on 27.11.2013 and due to the capsize of the said vehicle, she had sustained injuries. The respondent insurance company has taken a specific stand that the injured claimant had travelled only as a gratuitous / unauthorized passenger in the goods vehicle belonging to the 1st respondent and hence, they are not liable to pay any compensation.



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9. The accident has taken place on 27.11.2013 at about 12.30 p.m and an F.I.R has been lodged by one of the co-passengers on the same day at about 06.30 p.m. In the said F.I.R, the co-passenger has categorically stated that several persons including the injured claimant had travelled in the Tata Ace vehicle only as a gratuitous passenger in order to reach Valayapatti. The claimant in his claim petition has nowhere contended that she had travelled in the said goods vehicle either as a load man or as owner of the goods. Even in the chief examination, P.W.1 has not stated whether she had travelled in the said vehicle as owner of the goods or as a load man. During cross-examination alone, she has stated that there was coconut load in the said vehicle and she was sitting over the said coconut load. Therefore, there is no oral or documentary evidence whatsoever to establish the fact that the injured claimant was either the owner of the goods or the load man who had accompanied the coconut load. Therefore, this Court is constrained to confirm the findings of the tribunal that the injured claimant had only travelled as as gratuitous passenger.

10. The tribunal has proceeded to consider the quantum of award and has awarded a sum of Rs.4,51,749/- towards the injury sustained by the claimant. After arriving at a finding that the injured claimant had



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travelled as a gratuitous passenger, the tribunal has further held that she should be treated as a third party as between the insurance company and the owner of the vehicle. Considering the fact that the injured claimant had travelled over the goods vehicle, the tribunal has proceeded to direct the insurance company to satisfy the award and thereafter, recover the same from the owner of the goods. The Division Bench of our High Court in a judgment reported in **2018 (2) TN MAC 731 (Bharati AXA General Insurance Co.Ltd., Vs. Aandi & Others)** in Paragraph No.50 has held as follows:

*“We are therefore of the considered opinion that the judgment of the Two-Judge Bench in **Shivaraj v. Rajendra and another** referred supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the Compensation even in respect of an unauthorized Passenger, in a Goods Vehicle, in the light of categorical pronouncement of Larger Bench of the Hon'ble Supreme Court in **New India Assurance Company v. Asha Rani and others**; and **National Insurance Co.Ltd v. Baljit Kaur and others**, referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the Compensation and giving it the liberty to recover the same from the Owner.”*



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11. In view of the judgment of the Hon'ble Supreme Court which is followed by our Division Bench, this Court is of the view that the award of pay and recovery as against the insurance company passed by the tribunal is not legally sustainable. Therefore, the award could be meted only as against the owner of the vehicle, namely the 1st respondent in the claim petition / 2nd respondent in the appeal who is the owner of the Tata Ace vehicle.

12. The quantum of the award passed by the tribunal is hereby confirmed. However, with regard to the liability, the insurance company is exonerated and the award is passed as against the owner of the vehicle, namely the 2nd respondent in the appeal. In view of the above said deliberations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.03.2023

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

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- To
- 1.The Motor Accident claims Tribunal
cum Principal Sub Court,
Karur.
 - 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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