



C.M.A(MD)No.633 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.633 of 2017

and

C.M.P(MD)No.6540 of 2017

The Manager,
The New India Assurance Co.Ltd.,
863, Big Bazar Street,
Coimbatore.

... Appellant/4th Respondent

Vs.

1.Divya

... Respondent/Petitioner

2.M.Thangavelu

3.The Branch Manager,
National Insurance Company Ltd.,
No.62, TSR Periya Theru,
Kumbakonam.

4.J.Santhanapiriyam

... Respondents/Respondents 1-3

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree, dated 17.04.2015 passed in M.C.O.P.No.341 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court), Kulithalai.

For Appellants : Mr.G.Prabhu Rajadurai



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For R1 : Mr.M.Jerin Mathew

For R3 : Mr.D.Raj Kumar

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal, Kulithalai in M.C.O.P.No.341 of 2009.

2. The injured claimant was travelling as a co-passenger in a car driven by her husband. There was a head on collision between the car and the lorry that was coming in the opposite direction, in which the driver of the car, namely the husband of the claimant had passed away and the claimant had sustained injury in the said accident. The wife had filed M.C.O.P.No.341 of 2009 seeking compensation for the injury sustained by her and M.C.O.P.No.342 of 2009 for a death of her husband. The tribunal had jointly tried both the petitions and arrived at a finding that the driver of the car, namely the husband of the claimant was also responsible for the said accident and fixed 50% liability upon the husband of the claimant.



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3. Based upon the above said findings, the tribunal had awarded only 50% of the total compensation to be received by the wife in M.C.O.P.No.342 of 2009. A similar view has been taken in M.C.O.P.No. 341 of 2009 and 50% of the liability was fastened upon the insurance company of the lorry and the insurance company of the car.

4. The above appeal has been filed by the insurance company of the car contending that the car was overloaded at that point of time. The capacity of the car is 6. However, more than 6 persons have travelled in the said vehicle and in view of over loading, it is a clear case of violation of policy condition. He further contended that the driver of the car was not having badge for driving the T-board vehicle. In view of violation of these two policy conditions, the learned counsel for the appellant wants modification of the award to the extent that the principle of pay and recovery may be invoked and the company after satisfying the award, may be permitted to recover the same from the owner of the car.

5. The Hon'ble Supreme Court in a judgment reported in **2007 (7) SCC 445 (National Insurance Co.Ltd., Vs. Anjana Shyam & Others)** has held that in case, where there is allegation of over-loading of the vehicle, the insurance company has been directed to satisfy the award in



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the descending order. In other words, highest award has to be satisfied by the insurance company within the limit of the load of people. The rest of the awards have to be satisfied by the owner of the vehicle. In the present case, admittedly the car is having the capacity of 6 members and only 2 of them have made a claim. Therefore, the insurance company cannot escape from the liability. Therefore, the plea of overload cannot be taken into consideration and the said contention is rejected.

6. The Hon'ble Supreme Court in a judgment reported in **2017 (14) SCC 663 (Mukund Dewangan Vs. Oriental Insurance Company Ltd.,)** has held that mere non-holding of a badge will not exonerate the insurance company. Therefore, both the grounds raised by the insurance company in the present appeal are not legally sustainable and the appeal stands dismissed.

7. According to the learned counsel appearing for the respondent/claimant, they have filed an appeal challenging the 50:50 apportionment on the owner of the car. The order passed in the present appeal will not in any way affect the rights of the claimants in the other appeal.



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8. With the above said observations, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.03.2023

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

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To

- 1.The Motor Accident Claims Tribunal
(Sub Court),
Kulithalai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.



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Order made in
C.M.A(MD)No.633 of 2017

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