



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.259 of 2023

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The New India Assurance Company Limited.,
D.O.Jerome Building, Fort Station Road,
Trichy-620 002.

...Appellant/2nd Respondent

Vs.

1.Ganesan
2.Rajammal
3.Rajarajeswari

...Respondents 1-3/Petitioners

4.Siriya Pushpam

...4th Respondent/1st Respondent

[Respondents 4 and 5 were brought on record as legal heirs of the deceased first respondent vide Court order dated 03.10.2019]

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the award passed in M.C.O.P.No.1301 of 2017 dated 15.09.2022 on the file of the Motor Accidents Claims Tribunal, Special District Court, Tiruchirappalli.

For Appellant : Mr.J.S.Murali

JUDGMENT

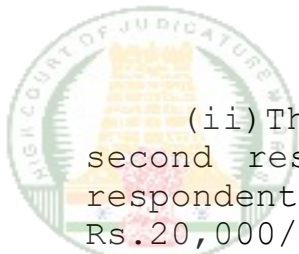
The Civil Miscellaneous Appeal has been filed challenging the compensation awarded by the Motor Accident Claims Tribunal / Special District Court, Tiruchirappalli in M.C.O.P.No.1301 of 2017 dated 15.09.2022.

2.For the sake of convenience, the parties herein are referred to as per their rank before the Tribunal.

3.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)On 01.10.2017 at about 01.15 p.m., the deceased was travelling in a jeep bearing Registration No.TN-45-AA-3792 along with his friends. The driver of the said vehicle drove the vehicle in a rash and negligent manner, and the jeep capsized. As a result, the deceased sustained grievous injuries and succumbed to the same on 02.10.2017. The case was also registered against the driver of the jeep.

<https://www.mca.gov.in/>



(ii) The first respondent is the father of the deceased. The second respondent is the mother of the deceased and the third respondent is the sister of the deceased. He was earning a sum of Rs.20,000/- at the relevant point of time. Hence, the claim petition was filed.

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(iii) The second respondent Insurance Company before the tribunal took a stand that the vehicle of the first respondent had been transferred to one Chellaperumal and he has not been made as a party to the proceedings. Further, only Act Policy was issued and no additional premium was paid by the first respondent enabling the Insurance Company to pay compensation even to the passengers travelled in the car. Hence, the Insurance Company disputed the liability.

4. Before the tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P3 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 was marked.

5. The tribunal after considering the entire oral and documentary evidence directed the Insurance Company to pay the compensation of Rs.14,95,800/- at the first instance and thereafter, recover the same from the fourth respondent herein. Challenging the same, the present appeal is filed by the Insurance Company.

6. The copy of the policy is placed before this Court. Perusal of the same reveals that only Act Policy was issued in respect of the vehicle in question. Only third party premium was alone paid and no additional premium was paid for the passengers travelling in the car. It is relevant to note that when the Insurance Policy being an Act Policy and no additional premium is paid by the insured, the Insurer cannot be fastened with liability. When there is no liability, the recovery cannot be made. The same dictum is also applied to the cases, when there is no coverage policy, the insurer is not liable to pay the compensation.

7. In such view of the matter, the direction issued by the Tribunal to the Insurance Company to pay and recover alone is set aside. Accordingly, this Civil Miscellaneous Appeal is allowed. The claimants are entitled to proceed against the owner of the vehicle for the amount awarded by the Tribunal. The amount deposited by the Insurance Company shall be refunded to the Insurance Company. No costs.

Sd/-

Assistant Registrar(AS)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)



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To

1.The Special District Judge,
Motor Accident Claims Tribunal
Tiruchirappalli.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.S.MURALI, Advocate (SR-24433[F] dated 28/04/2023)

C.M.A. (MD) No.259 of 2023
27.04.2023

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