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C.M.A.No.682 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.682 of 2021

And

C.M.P.No.4142 of 2021

The New India Assurance Company Limited,
Chittur Branch, Shri Valli Building Complex,
Anicode Junction, Chittur,
Kerala.

... Appellant

Vs.

1.Nagappan
2.Perumal
3.Krishnamoorthy
4.Vasantha
5.Murali
6.Manokaran
7.Saravanan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 22.03.2019 made in M.C.O.P.No.670 of 2016, on the file of the Motor Accidents Claims Tribunal, (II Additional District Court), Tiruppur.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.T.Shanmugam for R1, R2, R4 & R5
R3, R6 and R7 – No Appearance



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The third respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 22.03.2019 passed by the Motor Accidents Claims Tribunal, (II Additional District Court), Tiruppur, in M.C.O.P. No.670 of 2016.

2.The learned counsel appearing for the appellant submitted that the respondents 1 to 5/ claimants filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.11 Lakhs alleging that on 19.05.2015 at about 1.45 p.m., the deceased Mallika travelled along with her husband, daughter, son – in – law, grand daughters and grandsons in the TATA Motor/SFC 709 bearing Registration No.TN 60 H 0774 belonging to the seventh respondent for the purpose of duck grazing in Thimbam on Sakthi to Mysore Road in South to North direction near Iron Bridge North of Thimbam. At that time, the driver of the said vehicle drove the vehicle in a rash and negligent manner, due to which, the vehicle capsized and the deceased died on the spot and the others sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.12,21,200/- rounded off to Rs.12,00,000/- as compensation to the claimants along with interest at

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7.5% p.a. from the date of petition till the date of deposit and directed the appellant to deposit the amount and to recover the same from the owner of the vehicle/ seventh respondent by way of separate execution proceedings.

3.The learned counsel appearing for the appellant further submitted that the deceased travelled as an unauthorized passenger along with her husband and others and unauthorized passenger travelling in a goods vehicle is policy violation, for which the Insurance Company need not pay any compensation. Hence, the appellant is not liable to pay any compensation to the claimants. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**.

4.The learned counsel appearing for the respondents 1, 2, 4 & 5 submitted that the deceased was doing duck grazing business and for that purpose, she travelled along with her husband and others in the vehicle owned by the seventh respondent and the accident occurred.



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The learned counsel further submitted that the Hon'ble Apex Court in the decision reported in **(2020) 20 SCC 632 [Anu Bhanvara and others Vs. IFFCO TOKIO General Insurance Company Limited and others]** considered similar issue and directed the Insurance Company therein to pay the compensation to the claimants therein and thereafter to recover the same from the driver and owner of the vehicle therein. The learned counsel further submitted that in the present case, the Tribunal has ordered pay and recovery and hence, the impugned judgment warrants no interference.

5.Heard the learned counsel appearing for the Insurance Company and the learned counsel appearing for the claimants and perused the materials available on record.

6.The accident and the manner in which the accident happened are not disputed. Admittedly, the deceased travelled as an unauthorized passenger along with her husband and others in the vehicle owned by the seventh respondent driven by the sixth respondent and insured with the appellant.

7.The issue involved in the present case was elaborately



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considered by the Hon'ble Division Bench of this Court in the decision reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, the relevant portion of which is extracted hereunder:

"50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in MANU/SC/0021/2004 : (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in MANU/SC/0332/2018 : (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in MANU/SC/0794/2018 : 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others reported in MANU/SC/0194/2017 : (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to 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



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the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. 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."

8.The decision of the Hon'ble Division Bench of this Court reported in **2018 (2) TNMAC 731 (Mad) [Bharati Axa General Insurance Co. Ltd., Rep. by its Manager Vs. Aandi and others]**, makes it clear that the Insurance Company is not liable to pay compensation to unauthorized passenger travelling in a goods vehicle.

9.The decision relied upon by the learned counsel appearing for the claimants is not applicable to the present case on hand since in the said case, the claimants are injured young children and children may not do wrong and hence the Hon'ble Apex Court ordered for pay and recovery, whereas, in the present case, the deceased was 55 years at the time of accident.



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10.Hence, the award passed by the Tribunal warrants interference and the liability fastened on the appellant/ Insurance company is liable to be set aside.

11.The civil miscellaneous appeal is allowed. The judgment and decree dated 22.03.2019 passed by the Motor Accidents Claims Tribunal, (II Additional District Court), Tiruppur, in M.C.O.P. No.670 of 2016, is set aside as against the insurer/ appellant. Liberty is granted to the claimants/ respondents 1 to 5 to recover the award amount from the respondents 6 and 7/ driver and owner of the vehicle in the manner known to law. The appellant Insurance Company is permitted to withdraw the amount, if any, already deposited by them.

12.The civil miscellaneous appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

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1.The Motor Accidents Claims Tribunal,
(II Additional District Court), Tiruppur.

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M.DHANDAPANI,J.
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