



C.M.A(MD)No.1041 of2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1041 of 2013

and

M.P.(MD).No.1 of 2013

The Branch Manager,
The United India Insurance Company Limited,
No.457, V.E.Road,
Thoothukudi.

... Appellant

Vs.

1.K.Uma
2.Minor.M.Selvi
3.M.Chithral Pandi
4.C.Vedamanickam
5.A.Sheke Mohideen

6.The Branch Manager
The New India Assurance Company Limited,
84-A, Trivandrum Road,
Palayamkottai.

7.R.Arumugakani

...Respondents

(Minor 2nd respondent is represented through
her sister and next friend the 1st respondent)

(Notice to R5 to R7 may be dispensed with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree in M.C.O.P.No.237 of 2009 dated 06.12.2012 on the file of the Motor Accident Claims Tribunal, I Additional District Court, Thoothukudi.



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For Appellant : Mr.J.S.Murali
For R1 to R4 : No Appearance
For R5 to R7 : Notice dispensed with

JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of fatal. The contention of the Insurance Company is that it is a goods carriage van and all the passengers were gratuitous passengers. Further the passengers were not travelling with goods. Moreover, it is not a commercial vehicle for travelling as a passenger. Therefore, the Insurance Company is not liable to pay the compensation.

3. It is seen that several persons have travelled in the van. Except this case, in other cases, the Tribunal had declined to grant compensation and the Tribunal had fixed the liability on the owner and the owner was directed to pay the compensation and the claim petitions filed by the other passengers were dismissed against which none of them had preferred any appeal. In the present case alone, the Tribunal has fixed the liability on the Insurance Company. The contention of the Insurance Company is that when the question of liability is raised, it is applicable to all the passengers and there cannot be any discrimination.



4. On perusing the impugned order, it is seen that the Tribunal had fixed the liability on the owner only, but had granted pay and recovery order. In the present case, the Tribunal has awarded Rs.4,15,500/- with 7.5% interest per annum as compensation and has fixed 40% liability on the appellant and 60% liability on the 6th respondent. The Tribunal has directed the Insurance Companies to pay the same and recover from the owners of the respective vehicles. Hence, the contention of the appellant that the Tribunal had fixed the liability on the Insurance Company is incorrect. Therefore, this Court is not inclined to interfere in the impugned order and the impugned order is confirmed. The appellant shall deposit 40% of the liability and the 6th respondent shall deposit 60% of the liability. Both the appellant and the 6th respondent shall recover the said amount from the respective owners of the vehicles.

5.The appellant and the 6th respondent are directed to deposit their respective shares as stated supra (Rs.1,66,200/- and Rs.2,49,300/- respectively) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the



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Tribunal. The appellant Insurance Company and the 6th respondent Insurance Company are entitled to recover the same from the respective owners of the vehicles by way of filing Execution Petition, without actually filing a suit as held by Hon'ble Apex Court in the judgment reported in **2004 (2) CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**.

6. With the above said directions, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

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

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To

1.Motor Accident Claims Tribunal,
I Additional District Court, Thoothukudi.

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



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S.SRIMATHY, J.

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