



CRP(MD) No.305 of 2011

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Dated: 18.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.R.P.(MD)No.305 of 2011

The Manager
United India Insurance
Company Limited
Tirunelveli

... Petitioner/ Respondent No.2

Vs.

1. Malaiyandi .. Respondent No.1/Petitioner
2. K.Shahul Hameed ... Respondent No.2/ Respondent No.1

Prayer : This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the judgment and decree in M.C.O.P.No.48 of 2007 dated 04.12.2008 on the file of the Motor Accident Claims Tribunal, Additional District Court, Fast Track Court, Virudhunagar.

For Appellant : Mr.J.S.Murali

For R1& R2 : Died

JUDGMENT

This Civil Revision Petition has been filed against judgment and decree made in M.C.O.P.No.48 of 2007 dated 04.12.2008 on the file of the Motor Accident Claims Tribunal, Additional District Court,



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Fast Track Court, Virudhunagar, wherein the first respondent herein has filed claim petition before the Tribunal as against the second respondent and the appellant herein.

2. The Tribunal has awarded a sum of Rs.7,500/- with interest @ 7.5% per annum from the date of petition till the realization of the petition. Aggrieved over by the order passed by the Tribunal, the present revision has been preferred by the Insurance Company/second respondent.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the trial court

4. The brief facts of the petition averments in all petitions are as follows:

On 27.09.2006 at about 03.30 hrs. when the petitioner along with other person were proceeding in a Van bearing Reg.No.TN-67-Q-8757 belonging to the first respondent insured with the second respondent from Virudhunagar to Pudupatti, the driver of the said auto had driven the vehicle in a rash and negligent manner and capsized on the road near R.R. Nagar, due to which, one Velusamy



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died in the spot and this petitioner and others sustained grievous injuries all over the body. The above said accident took place due to the rash and negligent driving of the driver of the first respondent. Therefore, the petitioner has filed the claim petition for claiming compensation.

5. The brief averments made in the counter filed by the second respondent of the petition are as follows:

The prayer in the petition is not maintainable either in law or facts. The vehicle involved in the accident is load auto and the same was used for travel purpose which is against the condition of the policy, and thereby, the insurance company is not liable to pay any compensation to the petitioners and if any compensation is awarded, the same has to be paid by the owner of the vehicle and therefore, this respondent is not liable to pay any compensation to the petitioners. This respondent denied the age, income, occupation of the claimants and also denied the manner of accident and the accident did not take place due to negligence on the part of the driver of the first respondent and therefore, the second respondent is not liable to pay any compensation to the petitioner.



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6. Before the Tribunal, joint trial was conducted and common order was passed. Since so many persons injured in the said accident had filed petitions. In order to prove the case of the respective petitioners in claim petitions, they have examined P.W.1 to P.W.13 and marked exhibits Ex.P.1 to Ex.P.17 and on the side of the respondents, they have examined R.W.1 to R.W.3 and marked documents Ex.R.1 to R.5. After hearing both sides and perusing the records, the Tribunal has awarded compensation and directed the appellant/second respondent herein to pay compensation to the petitioners and recover the same from the second respondent/first respondent ie., the owner of the vehicle.

7. The learned counsel appearing for the petitioner would contend that the vehicle involved in the accident is a goods vehicle and the claimants have travelled as gratuitous passengers in the goods vehicle and thereby, there is a violation of conditions of policy. Since there is a violation of policy, the second respondent is not liable to pay any compensation to the petitioners. But the Tribunal without considering the same, erroneously awarded compensation to the petitioners and directed the appellant to pay the amount and then recover the same from the owner of the vehicle i.e.,second



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respondent/first respondent. In order to support his contention, he relied on the judgment of this Court in the case of ***Bharathi Axa General Insurance Co. Limited .vs. Aandi and others*** reported in ***2018(2) TN MAC 731(DB)***.

8. The learned counsel appearing for the first respondent would contend that the accident took place due to negligence on the part of the driver of the first respondent. Though the first respondents/petitioner travelled in a goods vehicle, so far as petitioner is concerned, he is a third party to the insurance company and thereby, the Tribunal after taking into consideration correctly awarded fair compensation and directed the insurance company i.e., the appellant/second respondent to pay the amount and then recover the same from the owner of the vehicle thereby, these appeal are liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following point for determination in this petition:

i) Whether the petition is liable to be allowed or not?



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10. In this case, there is no dispute in respect of the accident and the negligence on the part of the driver of the first respondent vehicle and the petitioner herein has filed this revision petition only as against the liability and there is no dispute with regard to the quantum of amount. The main contention of the revision petitioner is that the 1st respondent/ petitioner was travelling as gratuitous passenger in the goods vehicle and thereby, violated the conditions of policy. Since there is violation of condition of policy, the revision petitioner/insurance company is not liable to pay any compensation for the 1st respondent/ petitioner. The first respondent/ petitioner also admitted that he travelled in the goods vehicle. Therefore, the first respondent /petitioner has to be treated as unauthorized passenger and thereby, the second respondent/first respondent violated the condition of policy.

11. The learned counsel appearing for the revision petitioner relied on the judgment of this Court in the case of ***Bharathi Axa General Insurance Co. Limited .vs. Aandi and others*** reported in ***2018(2) TN MAC 731(DB)*** wherein, the Hon'ble Division Bench of this Court after relying on the judgment of the Hon'ble Supreme Court, has held that in case of unauthorized passenger travelling in a goods vehicle, the insurance company is



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not liable to pay compensation and pay and recovery cannot be ordered. In the case on hand also, it is an admitted fact that the 1st respondent petitioner travelled in the goods vehicle and thereby, he is also a gratuitous passenger.

12. In view of the above said judgment, the insurance company is not liable to pay compensation and pay and recovery cannot be ordered but the trial Court without considering the above said legal aspects erroneously ordered for pay and recovery. Therefore, the order passed by the Tribunal is liable to be modified and the second respondent/first respondent/the owner of the vehicle is liable to pay compensation to the first respondent/petitioner. In this case, there is no dispute with regard to the quantum of amount. Already the Tribunal has awarded a sum of Rs.7500/- and the same has not been disputed by the petitioner. Therefore, it is appropriate to direct the second respondent/ first respondent/owner of the vehicle to pay the compensation amount to the first respondent/petitioner and the revision petitioner /second respondent/insurance company is liable to be exonerated.

13. In the result, this Civil Revision Petition is partly allowed and the order passed by the Tribunal is modified to the



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effect that the first respondent/owner of the vehicle is directed to pay the compensation amount as awarded by the Tribunal and the petition is dismissed as against the second respondent/insurance company. No costs.

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

1. The Motor Accident Claims Tribunal,
sAdditional District Court, Fast Track Court, Virudhunagar
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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