



C.M.A(MD)No.480 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.480 of 2020

and

C.M.P(MD)No.5320 of 2020

M/s.National Insurance Company Limited,
Through its Branch Manager,
TP Hub, Aruvi Block,
No.127, St. Pauls Complex,
Bharathithasan Road,
Trichy.

... Appellant/2nd Respondent

Vs.

1.Aravi

2.Venkatasalam

3.Velusamy

4.Muthulakshmi

... Respondents 1 to 4/Petitioners

(Minor respondents 3 and 4 are declared as major and the guardianship of their father R-2 - Venkatasalam is discharged vide Court order, dated 20.02.2024 made in C.M.P(MD)No. 1748 of 2024 in C.M.A(MD)No.480 of 2020)

5.Anjalai

...5th Respondent/1st Respondent



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree, dated 14.11.2019 passed in M.C.O.P.No.71 of 2016 on the file of the Motor Accident Claims Tribunal, Kulithalai.

For Appellant : Mr.P.Malini
For R-1 : M/s.M.Maria Vinola
R-2 : Died
For R-3 & R-4 : No appearance
For R-5 : Mr.B.Prasanna Vinoth

JUDGMENT

The Insurance Company has filed the instant appeal challenging the award made in M.C.O.P.No.71 of 2016 on the file of the Motor Accident Claims Tribunal, Kulithalai, primarily on the ground of liability.

2. According to the claimants, the deceased person was a worker / load man in order to load and unload the wastages and he was travelling on the tractor on 24.09.2015. Due to the rash and negligent driving of the driver of the tractor, the deceased had fallen down, sustained injuries and



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later succumbed to the injuries. The claimants have prayed for a sum of Rs.20,00,000/- as compensation.

3. The Insurance Company has filed a counter contending that the deceased was sitting on the tractor as an un-authorized passenger and therefore, they are not liable to pay any compensation.

4. The Tribunal after considering the oral and documentary evidence has arrived at a finding that the deceased was travelling upon the engine of the tractor and the deceased is an un-authorized passenger sitting on the engine of the tractor. The Tribunal has further found that the accident has taken place only due to the rash and negligent driving on the part of the driver of the tractor. The Tribunal has further found that, it is a policy violation to permit an un-authorized passenger to sit upon the engine of the tractor and has proceeded to direct the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the tractor. The Tribunal has awarded a sum of Rs.13,58,468/-. This award is under challenge in the present appeal.



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5. According to the learned Counsel appearing for the appellant / Insurance Company, the deceased was sitting upon the engine of the tractor. Therefore, the policy does not cover an un-authorized person sitting upon the tractor. There is no coverage for such un-authorized persons under the Insurance policy. When there is no coverage, the question of ordering pay and recovery would not arise.

6. Per contra, the learned Counsel appearing for the claimants had contended that when the policy is subsisting and it is difficult to recover the amount from the owner of the tractor, the order of pay and recovery has been passed only considering the convenience of the claimants to recover the amount. The learned Counsel appearing for the claimants had contended that when the policy is subsisting liability cannot be shifted upon the owner.

7. I have carefully considered the submissions made on either side and perused the materials available on record.



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8. The pleadings in the claim petition indicate that the deceased was sitting upon the tractor for the purpose of un-loading the wastages to the agricultural lands. The accident has taken place due to the rash and negligent driving on the part of the driver of the tractor. The Tribunal has arrived at a specific finding that the deceased was sitting upon engine of the tractor and he was an un-authorized passenger.

9. A perusal of the Insurance policy, which is marked as Exhibit R.1 indicates that, though it is a package policy, it covers only the third party liability and the driver of the tractor. The deceased having travelled as an un-authorized passenger on the engine of the tractor is not covered by the policy at all. That apart, travelling upon the engine of the tractor is not merely a violation of policy condition, but it is against the statutory provisions. In such circumstances, there is no liability upon the Insurance Company. When there is no liability, the question of ordering pay and recovery would not arise.

10. The Hon'ble Supreme Court in a judgment in ***Civil Appeal Nos.1718 and 1719 of 2007 [Oriental Insurance Company Vs. Natthi Bai and Others]*** has held that, if a person travels on the mudguard of a



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tractor, he cannot be treated as a passenger. The policy covers only the driver of the tractor and not any other third party.

11. In view of the above said deliberations, the award of the Tribunal directing the appellant Insurance Company to satisfy the award and thereafter, recover the same from the owner is hereby set aside. The appellant Insurance Company is exonerated from the liability and it is mulcted on the owner of the tractor. However, in other respects, the award of the Tribunal stands confirmed. The Tribunal is directed to refund the amount, if any deposited by the Insurance Company along with accrued interest.

12. This appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

30.04.2024

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



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To

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



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
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30.04.2024