



C.M.A(MD)Nos.444 to 447 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.444 to 447 of 2019

and

C.M.P(MD)Nos.5279 to 5282 of 2019

C.M.A(MD)No.444 of 2019:

The Branch Manager,
M/s.New India Assurance Company Limited,
161-A, East Veli Street,
Madurai.

... Appellant/2nd respondent

Vs.

Ammathai (Died)

1.Gurumpan

... Respondent/Petitioner

2.Rajendran

... Respondent/ 1st Respondent

Periyakaruppan (Died)

3.Sadhasivam

4.Jeyaraman

5.Rathinam

6.Ravi

7.The Divisional Manager,
United India Insurance Co. Ltd.,
7-A, West Veli Street,
Madurai-625 001.

... Respondents/Respondents 4-8



C.M.A(MD)Nos.444 to 447 of 2019

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in M.C.O.P.No.334 of 2007, dated 27th day of February, 2019.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.A.John Vincent

For R2-R6 : No Appearance

For R7 : Mr.J.S.Murali

C.M.A(MD)No.445 of 2019:

The Branch Manager,
M/s.New India Assurance Company Limited,
161-A, East Veli Street,
Madurai.

... Appellant/2nd respondent

Vs.

1.Balamurugan

... Respondent/Petitioner

2.Rajendran

... Respondent/ 1st Respondent

Periyakaruppan (Died)

3.Sadhasivam

4.Jeyaraman

5.Rathinam

6.Ravi

7.The Divisional Manager,
United India Insurance Co. Ltd.,
7-A, West Veli Street,
Madurai-625 001.

... Respondents/Respondents 4-8



C.M.A(MD)Nos.444 to 447 of 2019

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in M.C.O.P.No.335 of 2007, dated 27th day of February, 2019.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.A.John Vincent

For R2-R6 : No Appearance

For R7 : Mr.J.S.Murali

C.M.A(MD)No.446 of 2019:

The Branch Manager,
M/s.New India Assurance Company Limited,
161-A, East Veli Street,
Madurai.

... Appellant/2nd respondent

Vs.

1.Vannakkili (Died)

... Respondent/Petitioner

2.Rajendran

... Respondent/ 1st Respondent

Periyakaruppan (Died)

3.Sadhasivam

4.Jeyaraman

5.Rathinam

6.Ravi

7.The Divisional Manager,
United India Insurance Co. Ltd.,
7-A, West Veli Street,
Madurai-625 001.

... Respondents/Respondents 4-8



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8.Ochadevar

Sumitha (Died)

9.Mala

10.Jayaseetha

11.Deepan

... Proposed Respondents

(R8 to R11 are brought on record as Lrs of the deceased R1 vide Court order, dated 11.09.2023 made in C.M.P(MD)Nos.8975 to 8977 of 2023)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in M.C.O.P.No.1586 of 2008, dated 27th day of February, 2019.

For Appellant : Mr.D.Sivaraman

For R8-R11 : Mr.A.John Vincent

For R2-R6 : No Appearance

For R7 : Mr.J.S.Murali

C.M.A(MD)No.447 of 2019:

The Branch Manager,
M/s.New India Assurance Company Limited,
161-A, East Veli Street,
Madurai.

... Appellant/2nd respondent

Vs.

1.Subbuthai (Died)

... Respondent/Petitioner

2.Rajendran

... Respondent/ 1st Respondent



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Periyakaruppan (Died)

3.Sadhasivam

4.Jeyaraman

5.Rathinam

6.Ravi

7.The Divisional Manager,
United India Insurance Co. Ltd.,
7-A, West Veli Street,
Madurai-625 001.

... Respondents/Respondents 4-8

8.Selvakodi

... Proposed Respondent

(R8 is brought on record as Lr of the deceased R1 vide Court order, dated 11.09.2023 made in C.M.P(MD)Nos.8979, 8981 & 8982 of 2023)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, IV Additional District Judge, Madurai in M.C.O.P.No.1587 of 2008, dated 27th day of February, 2019.

For Appellant : Mr.D.Sivaraman

For R8 : Mr.A.John Vincent

For R2-R6 : No Appearance

For R7 : Mr.J.S.Murali



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COMMON JUDGMENT

WEB COPY All the four appeals arise out of M.C.O.P.Nos.334 & 335 of 2007 and 1586 & 1587 of 2008 on the file of IV Additional District Court, Madurai.

2. C.M.A(MD)No.444 of 2019 arises out of M.C.O.P.No.334 of 2007 in which the legal heirs of the deceased have filed the claim petition. All other claim petitions have been filed by the injured claimants. It is the case of the claimants that on 22.06.2006 at about 1.45 p.m., they have travelled in a trailer attached to a tractor after attending a funeral ceremony. They have further contended that the tractor was driven in a rash and negligent manner and it turned turtle. In the said accident, one of the passengers had passed away and other 3 of them have sustained grievous injuries.

3. The owner of the tractor and trailer had remained *ex parte* and the Insurance Company filed a counter specifically contending that the claimants having travelled as a gratuitous passengers in a goods vehicle and they are not covered by the policy. The tribunal after considering the evidence on either side, arrived at a finding that the deceased as well as the injured persons have travelled in the trailer only to attend a funeral ceremony. After arriving at such a finding, the tribunal further held that there is a policy violation on behalf of the owner of the trailer and



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therefore, the Insurance Company should be mulcted with the liability.

The tribunal further found that it is very difficult for the claimants to recover the compensation amount from the owner of the trailer. But, on the other hand, the Insurance Company will be in a better position to recover the said amount from the owner of the trailer. Based upon the said observations, the initial liability was fixed upon the Insurance Company with liberty to the Insurance Company to recover the same from the owner of the tractor. The tribunal had fixed the quantum of compensation differently with regard to each one of the claim petitions.

4. Challenging all these awards, the present appeals have been filed by the Insurance Company primarily on the ground that when the deceased as well as injured persons having travelled in the trailer attached to the tractor as gratuitous passengers to attend a funeral, they are not covered by the policy at all. When there is no coverage, the question of ordering pay and recovery would not arise. The learned counsel appearing for the appellant had relied upon the Division Bench judgment of our High Court reported in **2018 (2) TNMAC 731 (Bharati AXA General Insurance Co. Ltd., v. Aandi and others)** and contended that when the gratuitous passengers who have travelled in the goods vehicle are not covered by the policy, the Court cannot order pay and recovery.



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5. Per contra, the learned counsel appearing for the respondents/claimants have contended that instead of the claimants recovering the amount from the owner of the tractor, the Insurance Company will be in a better position to directly pay the compensation amount to the claimants and thereafter, would recover the said amount from the owner of the tractor. Therefore, considering the convenience of the claimants, the trial Court has passed an order of pay and recovery which may not be disturbed.

6. I have carefully considered the submissions made on either side and perused the material records.

7. In the claim petitions, the claimants have specifically contended that they have travelled in a trailer attached to a tractor after attending a funeral ceremony. Without the impact of any offending vehicle, the trailer had turned turtle. The tribunal in paragraph no.8 of the award had specifically found that at least 60 persons have travelled in the trailer at the relevant point of time. It has also confirmed the fact that they have travelled as gratuitous passengers. Therefore, it is clear that the deceased as well as the injured persons have travelled only as gratuitous passengers in the goods vehicle and not in any other capacity. When these facts are not in dispute, the tribunal ought not to have ordered pay



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and recovery on the simple ground that the claimants would not be in a position to recover the compensation amount directly from the owner of the tractor. The Hon'ble Division Bench of this Court in a judgment reported in **2018 (2) TNMAC 731 (Bharati AXA General Insurance Co. Ltd., v. Aandi and others)** had an occasion to consider the said issue and in paragraph no.51, the Hon'ble Division Bench has considered the difficulty faced by the claimants in realizing the award from the owners of the vehicle and has proceeded to hold that when death or injury takes place to gratuitous passengers travelling in a goods vehicle, they are not covered by the policy and therefore, no question of pay and recovery would arise in such cases. Therefore, this Court is of the considered opinion that the direction of the tribunal to the Insurance Company to pay the compensation amount and thereafter, recover the same from the owner of the tractor is not legally sustainable.

8. In view of the above said facts, the order of pay and recovery alone is set aside. The appellant Insurance Company is exonerated from the liability. The 1st respondent in claim petitions and the 2nd respondent in the appeal, namely Rajendran who is the owner of the tractor is mulcted with the entire liability. In all other respects, the award of the tribunal stands confirmed.



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9. In view of the above said deliberations, all the Civil

Miscellaneous Appeals are partly allowed to the extent as stated above.

No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

23.04.2024

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

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To

- 1.The IV Additional District Court,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in
C.M.A(MD)Nos.444 to 447 of 2019

23.04.2024