



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A(MD)No.1093 of 2014
and
M.P(MD)No.1 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
39,40, Saratha Shopping Complex,
Simmakkal, Madurai ...Appellant/2nd Respondent

.Vs.

1.Minor Gayathri
(1st respondent represented by her mother and next friend
Krishnaveni, Wife of Raju ... 1st Respondent/Petitioner

2.Muthu Vazhivittan ...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award made in M.C.O.P.No.486 of 2010, dated 4.9.2014, on the file of the Motor Accidents Claims Tribunal / II Additional Subordinate Judge, Madurai.

For Appellant : Mr.K.Balasubramanian

For Respondent-1 : Mr.PT.S.Narendravasan

For Respondent-2 :Mr.N.V.Sureshkumar



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the award made in M.C.O.P.No.486 of 2010, dated 04.09.2014, by the Motor Accidents Claims Tribunal/II Additional Subordinate Judge, Madurai.

2. The details set out in the claim petition is stated in brief:

On 26.04.2009, while the minor claimant along with her mother and others were travelling in Tata Ace Van bearing Registration No. TN 59 TMP 7335 along Madurai Alagar Koil Main Road, proceeding from north to south, at about 3.30 p.m. near Kallalagar Petrol Bunk, Madurai and the driver drove the vehicle at a high speed in a rash and negligent manner and suddenly applied break. Due to the said impact, the vehicle capsized and the Petitioner and others sustained serious injuries. The Petitioner was taken to the Government Rajaji Hospital, Madurai for treatment and took further treatment at Raghavendra Hospital from 27.04.2009 to 17.05.2009. As the accident occurred due to the rash and negligent driving of the driver of the first respondent vehicle, the first respondent, owner of the vehicle and the second respondent, who is the insurer of the erred vehicle, are liable to pay compensation to the injured.

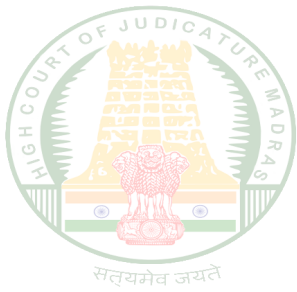


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3. Per contra, it is counteracted by the Insurance Company by stating in the counter that the Petitioner is put to strict proof of the medical expenses and other details. It has been further averred that since the owner of the vehicle has violated the policy condition, by permitting more number of persons to travel in the goods carriage vehicle. Therefore, the Petitioner is not entitled to claim compensation from the second respondent as he is not liable to honour the claim of the claimant.

4. At trial, on the claimant's side, three witnesses have been examined and three documents were marked. On the respondent's side, the Assistant Manager of the Insurance Company has been examined as R.W.1 and the copy of the Insurance Policy is ExR1.

5. Upon consideration, by relying upon the testimony of R.W.1, the Tribunal concluded that the policy conditions have been violated by permitting more number of persons to travel in a goods carriage vehicle. The Tribunal ordered to pay the compensation by the insurer at the first instance to the claimant and then to recover the same from the owner of the vehicle. Under different heads, an amount of Rs.1,09,079/- was granted as compensation.

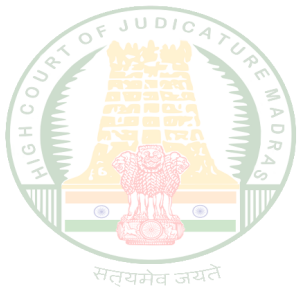


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6. Through P.W.1, the mother of the minor claimant, it has come on record that she along with her child and others attended ear-boring ceremony at Alagar Koil and while returning in the vehicle bearing Registration No.TN 59 TMP 7335 at about 3.30 p.m. near Kallalagar Petrol bunk, when the van was proceeding from north to south towards Madurai, a two wheeler tried to overtake the van and suddenly turn left towards petrol bunk, the driver lost control of the vehicle and applied sudden break. Due to the said impact, the vehicle rolled over on the left side of the road and her daughter Gayathri sustained serious injuries.

7. On the Insurance Company side, its witness R.W.1, the Assistant Manager of the Insurance Company would state that the vehicle which involved in the accident is a goods carriage vehicle and at the time of accident, in violation of the terms of the policy, more number of persons travelled in the vehicle and thereby the owner has violated the policy condition. It is his further evidence that as the policy condition is violated by the owner of the vehicle, the Insurance Company is not liable to pay compensation to the injured, thereby avoided liability.

8. It is discernible from the available oral and documentary evidence that



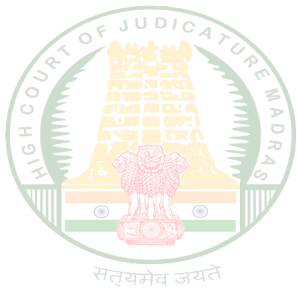
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at the relevant point of time, more number of persons got injured and one person died of the accident. Two persons including the driver are permitted to travel in the TATA Ace Van(Ex.R10). Therefore, at the relevant point of time, more number of persons than the admitted persons travelled in the TATA Ace van and thereby the owner has violated the policy condition.

9. Having considered the above said details, the Tribunal has ordered to pay the compensation to the claimant by the Insurance Company as he is the insurer at the first instance and thereafter to recover the same from the owner of the vehicle. I find no good reason to vary from the said finding of the Tribunal.

10. Based on the aforesaid discussions and observations, the Civil Miscellaneous Appeal stands dismissed; and

(i) The appellant-Insurance Company is directed to deposit the award amount of Rs.1,09,079/-as ordered by the Tribunal, together with accrued interest at the rate of 7.5% p.a from the date of claim petition till the date of deposit and costs, less the award amount, if any already deposited, to the credit of claim petition at the first instance within a period of eight weeks from the date of receipt of a copy of this order and then to recover the same from the owner of the vehicle by following the due process of law.



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(ii) The Tribunal is directed to deposit the award amount in any one of the nationalized bank, in an interest bearing fixed deposit, initially for a period of three years, renewable thereafter, till the minor attains majority.

(iii) The mother and next friend of minor claimant Krishnaveni, wife of Raju is permitted to withdraw interest from the above said deposit once in three months, directly from the Bank and utilize the same for the welfare of the child.

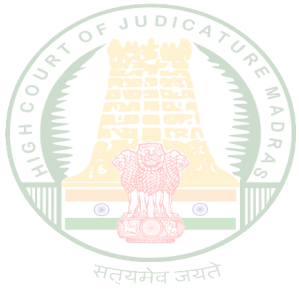
(iv) There is no order as to costs. Consequently connected Miscellaneous Petition is closed.

31.12.2024

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

To

1. The Motor Accidents Claims Tribunal-cum-
II Additional Subordinate Judge,
Madurai.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI, J.,

vsn

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