



C.M.A(MD)No.1269 of2014

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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.1269 of 2014

and

M.P.(MD).No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
P.B.No.112, North Street,
Nagercoil, Agastheeshwaram Taluk,
Kanyakumari District.

... Appellant

Vs.

1.Anvar
2.Stanley Paul
3.Stanislas

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 11.10.2012 made in M.C.O.P.No.41 of 2008 on the file of the Motor Accident Claims Tribunal/ Sub-Judge, Padmanabhapuram.

For Appellant : Mr.J.S.Murali
For R1 : Mr.K.Vamanan
For R2 & R3 : No appearance



C.M.A(MD)No.1269 of2014

JUDGMENT

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The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of injury. The contention of the Insurance Company is that the vehicle involved in the accident has only driver seat and behind the seat goods can be loaded. However, the accident describes that the injured travelled as a pillion rider, hence it is evident the injured had travelled in the portion where goods can be loaded. Hence, the injured had travelled unauthorizedly as gratuitous passenger, therefore the Insurance Company is not liable to pay the compensation.

3. The learned Counsel appearing for the 1st respondent herein / claimant submitted that the Insurance Company had already deposited the amount and the injured had withdrawn the same.

4. After hearing the submissions of both sides, this Court is of the considered opinion when the injured had already withdrawn the compensation, the same cannot be recovered from the injured. The only possibility is to allow the Insurance Company to recover it from the owner. Hence, this Court is inclined to grant liberty to the Insurance Company to recover the compensation from the owner / 3rd respondent herein.



C.M.A(MD)No.1269 of2014

5. The Tribunal had awarded Rs.1,23,385/- with 7.5% interest per annum and costs as compensation to the claimant. The learned Counsel appearing for the claimant submitted that the Insurance Company had already deposited the compensation and the claimant had withdrawn the same. In view of the above said submission, this Court is of the considered opinion that the appellant Insurance Company is at liberty to recover the compensation from the owner of the vehicle / 3rd respondent herein, 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 partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

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

Tmg



C.M.A(MD)No.1269 of2014

To

1.Motor Accident Claims Tribunal Tribunal/
Sub-Judge, Padmanabhapuram.

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



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C.M.A(MD)No.1269 of2014

S.SRIMATHY, J.

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C.M.A(MD)No.1269 of 2014

18.06.2024