



C.M.A(MD)No.572 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.572 of 2014

and

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

M/s.National Insurance Company Limited,
Represented though its Divisional Manager,
No.3, North Veli Street,
Madurai.

... Appellant

Vs.

1. Chinnavalathi @ Rani
2. Tamilselvi
3.Thangam
4.Selvam
5.R.Ajmeer

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 19.08.2011 made in M.C.O.P.No.1997 of 2009, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.3, Madurai.

For Appellant : Mr.J.S.Murali
For R1 to R4 : Mr.C.Sundaravadivel
For R5 : No Appearance



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JUDGMENT

The Insurance Company has preferred this Civil Miscellaneous Appeal.

2. It is a case of fatal. The contention of the Insurance Company is that Mahindra Maxi cab was the vehicle involved in the accident. Even as per the Insurance Company the said vehicle is a passenger vehicle wherein 12+1 persons is allowed to travel. However, in the present case at the time of accident, 21 persons have travelled in the vehicle which is gross violation of policy condition. Further, fitness certificate (FC) was already expired on 03.08.3009 and at the time of accident there was no FC. Therefore, by considering these two violations, the Tribunal ought not to have granted compensation and ought not to have fixed the liability on the Insurance Company.

3. However, the learned Counsel appearing for the respondents 1 to 4 submitted even though the vehicle can accommodate only 12+1 persons but 21 passengers have travelled in the vehicle, the Insurance Company is liable to pay the compensation for the said 12 persons and the Insurance Company may not be liable for the all 21 persons. He further submitted that the said issue was



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considered in the case of *National Insurance Company Limited Vs Anjana Shyam and others* reported in *2007 (7) SCC 445* wherein the Hon'ble Supreme Court has considered the issue and has held that the Insurance Company is liable up to 12 persons and if there is any claim for compensation over and above 12 persons, the same will not bind on the Insurance Company. In the present case, since 21 passengers have travelled, the Insurance Company is liable to pay the compensation for atleast 12 passengers. Therefore, this Court is rejecting the said contention.

4. As far as the Fitness certificate (FC) is concerned, it is absolute violation. Therefore, the owner of the vehicle is liable to pay the compensation. This Court is of the considered opinion that the Insurance Company shall pay the compensation and recover the same from the owner of the vehicle.

5. The appellant Insurance Company is directed to deposit Rs.4,41,000/- (Rupees Four Lakh Forty One Thousand only) with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to



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withdraw their shares with proportionate accrued interests and costs in the ratio fixed by the Tribunal, less the amount already withdrawn by them, if any, by filing appropriate application before the Tribunal. The appellant Insurance Company is entitled to recover the same from the owner of the vehicle / 5th 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

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To:

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- 1.Motor Accidents Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court No.3,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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