



C.M.A.(MD) No.1123 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 31.12.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.1123 of 2023
and
C.M.P.(MD)No.15238 of 2023

The Manager,
National Insurance Company Limited,
Office at No.63, Rasi Plaza,
West Pradhakshnam Road,
Karur.
Appellant

...

vs.

1.Devi

2.K.Selvam.
Respondents

...

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1973, against judgment and decree dated 18.04.2023, made in M.C.O.P.No.327 of 2019 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate, Karur.



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For appellant : Mr.D.Sivaraman

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree dated 18.04.2023 passed in M.C.O.P.No.327 of 2019 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate Court, Karur, on liability issue.

2. Despite the receipt of notice, the respondents neither appeared in person nor represented through their counsel.

3. The case details as set out in the claim petition are given hereunder in brief:

On 20.05.2018 at about 9.15 p.m., the claimant/Devi (M.C.O.P.No.327 of 2019), along with Rajalingam (M.C.O.P.No.304 of 2022), Minor Harish Ragavendra (M.C.O.P.No.265 of 2019), Saroja (M.C.O.P.No.288 of 2019), Lakshmi (M.C.O.P.No.328 of



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2019), , Minor Nandhini (M.C.O.P.No.326 of 2019), Thangavel (M.C.O.P.No.289 of 2019) and other four passengers travelled in Toyota Qualis car bearing Registration No.TN-63-D-6226. While the said car was proceeding from downward direction from Kodaikanal-Palani main road, near the 3rd hairpin bend, the driver of the Qualis car drove the vehicle in a rash and negligent manner and hit on the road side bridge. Due to the said impact, the abovesaid persons, who travelled in the said car, sustained injuries. Due to the rash and negligent driving of the driver of the said Qualis car, the accident happened. The first respondent therein/owner of the car and the second respondent/insurer of the said car are liable to pay the compensation.

4. The claim petition averments were counteracted by filing counter on behalf of the insurance company to the effect that the petitioner is put to strict proof of the occurrence and other details. Only eight persons can travel in the car, but at the time of accident, 13 persons travelled including the driver of the vehicle, which is in violation of conditions of insurance policy and Motor Vehicles Act. Therefore, the claimant is not entitled to claim any compensation



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from the second respondent therein/insurance company.

Furthermore, as the policy is a 'liability only policy' and the premium was paid only to cover the risk, third parties and the injured, who travelled in the vehicle, are not entitled to claim any compensation from the second respondent therein/insurance company. If at all the claimant is entitled to claim from the first respondent therein/owner of the vehicle, age, occupation, income of the claimant ought to be proved by her.

5. During trial, common evidence was let in in M.C.O.P.No. 265 of 2019 and common award was passed.

6. At trial, on the claimants' side, seven witnesses were examined and 33 documents were marked. On the second respondent/insurance company's side, Administrative Officer of the second respondent Mr.Moovendan was examined as R.W.1. Ex.R1 is the copy of the insurance policy of the vehicle (Registration No.TN-63-D-6226). Disability certificates of the claimants are Exs.C1 to C5.



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7. The Tribunal, upon consideration, held that the additional premium has been paid for the occupants of the vehicle, the insurance company is liable to pay compensation to the injured persons and directed the second respondent therein/insurance company to pay a sum of Rs.35,400/- to the claimant herein.

8. Mr.D.Sivaraman, learned counsel appearing for the appellant/insurance company would, vehemently, contend that though the policy, being 'act policy' and the seating capacity of the vehicle is only eight, the owner, permitting more than seven passengers (except driver), violated the policy conditions. Because of the same, the insurance company is not liable to honour the policy and to pay compensation to the injured claimants.

9. To buttress his arguments, the below said judgments were referred to:

1. ***Dr.T.V.Josh vs. Chacko P.M. and others*** reported in ***2001 ACJ 2059***;

2. ***United India Insurance Company Ltd., vs. Thilak Singh and others*** reported in ***2006 (4) SCC 404***;



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3. *Oriental Life Insurance Company vs Suthakaran*

K.V. and others reported in **2008 ACJ 2045**;

4. *United India Insurance Company Ltd., vs.*

M.Lakshmi and others (Civil Appeal No.6659 of 2008(SC), dated 14.11.2008);

5. *New India Assurance Company Ltd., vs.*

S.Krishnansamy and others reported in **2015 (1) TNMAC 19 (DB)**;

6. *United India Insurance Company Ltd., vs. Sathish*

kumar and another reported in **2019 (1) TNMAC 332**.

10. The main grievance of the appellant/insurance company is that the policy is a 'liability only policy' and only 7+1 persons can travel in the Qualis car, as per Registration Certificate details. At the relevant point of time, more than eight persons travelled in that car and it is a clear violation of policy. As they are unauthorised persons, the insurance company is not liable to pay any compensation to the claimants.

11. A thorough perusal of Ex.R1/policy indicates that it is a



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'liability only policy' and the seating capacity of the said car is eight persons (7+1 (driver)). On a deep perusal of all the claim details and the connected records due to the accident, it seems that seven persons sustained injuries and they filed claim applications claiming compensation for the injuries sustained on account of the accident, as mentioned supra.

12. Insurance policy is a form of contract. The parties to the contract are governed by terms and conditions of the policy. In the policy, bottom of the first page, under the head 'personal accident cover details', an amount of Rs.500/- is collected for personal accident cover for the owner/driver and under the head unnamed passengers, eight persons have been covered, for which the premium of Rs.50/- is collected. In all, Injured are seven in number. Therefore, it should not lie in the mouth of the insurance company that the policy is a 'liability only policy' and the insurance company is not liable to honour the policy.

13. Based on the aforesaid discussions and observations, as the policy covers eight persons, liability is fastened on the



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insurance company to pay compensation to the claimant by the Tribunal, this Court finds no valid reason to upset the findings of the Tribunal.

14. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The Insurance Company/appellant is directed to deposit the compensation amount (awarded by the Tribunal) i.e., Rs. 35,400/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs to the credit of M.C.O.P.No.327 of 2019 on the file of Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Karur, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the claimant/first respondent, on appropriate application, is permitted to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.



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NCC : Yes/No
Index : Yes / No
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(5/7)

To

1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate,
Karur.

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

R.KALAIMATHI,J

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Pre-delivery order made in
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V.R. Section,
Madurai Bench of Madras High Court,
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R.KALAIMATHI,J

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