



C.M.A(MD)No.1028 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1028 of 2018
and
C.M.P(MD)No.10762 of 2018

The Divisional Manager,
National Insurance Company Limited,
Trichy.

... Appellant/2nd Respondent

Vs.

1.Indirani

2.Nagamuthu

3.Minor Deepa

4.Minor Rooba

5.Minor Arumugam

... Respondents/Petitioners

6.K.Veerappan

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Court, Kulithalai in M.C.O.P.No. 25 of 2012, dated 17.08.2016.



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For Appellant : Mr.D.Sivaraman

For Respondents : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed in M.C.O.P.No.25 of 2012 on the file of Motor Accidents Claims Tribunal / Sub Court, Kulithalai.

2. As per the claim petition, the deceased was travelling in a goods vehicle as owner of the goods on 17.04.2011. The driver of the said goods vehicle had driven the vehicle in a rash and negligent manner and it got capsized and the passenger of the said goods vehicle had succumbed to the injuries.

3. The insurance company has filed a counter contending that the deceased was an un-authorized passenger in a goods vehicle and there is no record to show that he was travelling in the said goods vehicle as owner of the goods.

4. The tribunal after considering Exhibit P.1-F.I.R and the



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evidence of P.W.2, has arrived at a finding that there is no evidence to show that the deceased had travelled in the goods vehicle as owner of the goods and also arrived at a finding that he is an un-authorized passenger. However, the tribunal has arrived at another finding that travelling as a passenger in a goods vehicle is only a violation of policy condition and thereafter, proceeded to direct the insurance company to satisfy the award and thereafter, recover the same from the owner of the vehicle. Challenging the said order of pay and recovery, this appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the insurance company, when admittedly the deceased had travelled as an un-authorized passenger in a goods vehicle, there is no coverage under the policy and therefore, the question of pay and recovery would not arise. It is not mere violation of policy condition, it is a statutory violation. Hence, he prayed for allowing the appeal.

6. Though the claimants have been served and their names are printed in the cause-list, they have not chosen to appear either in person or through counsel.



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7. Immediately after the accident, one of the passengers of the goods vehicle, namely Chellappan had lodged an F.I.R before the police.

It is marked as Exhibit P.1. A perusal of the F.I.R clearly indicates that several persons have hired the goods vehicle for the purpose of attending ear boring ceremony. However, in the claim petition, it is contended that the deceased had travelled as owner of the goods. There is no reference with regard to the fact that what were the goods that were carried in the goods vehicle. The tribunal has arrived at a specific finding that the deceased had travelled only as an un-authorized passenger. Therefore, it is clear that an un-authorized passenger is not covered by the insurance policy. In such circumstances, the question of invoking the order of pay and recovery would not arise.

8. The Hon'ble Division Bench of our High Court in a judgment reported in **2018 (2) TN MAC 731 (Bharati AXA General Insurance Co. Ltd., v. Aandi and others)** has categorically held that the un-authorized passengers / gratuitous passengers in goods vehicle are not mandated to be covered under the insurance policy and therefore, there cannot be an order of pay and recovery. The said judgment is squarely applicable to the facts of the present case.



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9. In view of the above said deliberations, the award passed by the tribunal relating to pay and recovery is hereby set aside and the appellant insurance company is exonerated. However, the liability is mulcted upon the 6th respondent in the appeal, namely K.Veerappan, who is the owner of the van bearing Registration No.407 TN 33 E 2299 for payment of the said compensation amount. In other respects, the award of the tribunal stands confirmed.

10. With the said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

02.07.2024

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

1.The Motor Accident Claims Tribunal,
Sub Court,
Kulithalai.

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



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R.VIJAYAKUMAR,J.

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Order made in
C.M.A(MD)No.1028 of 2018

02.07.2024