



C.M.A.(MD) No.1124 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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1.Selvi,
2.A.Madurai Veeran,
3.Minor A. Ishwarya,
4.Minor A.Maruthamuthu,
5.Chinnaponnu. ... Appellants
(Minors/appellants 3 & 4 represented by their mother/
guardian/first appellant)

vs.

1.Anil C.Bomb,
2.M/s.Royal Sundaram Alliance Insurance Company Ltd.,
Through its Manager,
ATP Towers, 12-A, 5th Floor,
Bye-pass road, Madurai – 625 010. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 03.11.2022 in M.C.O.P.No.1868 of 2018 on the file of the Special District Judge [MACT]/Motor Accidents Claims Tribunal, Madurai.



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For appellants : Mr.V.Sakthivel

For Respondents

for R1 : No appearance

for R2 : Mr.S.Srinivasa Raghavan

J U D G M E N T

The claimants had preferred this appeal aggrieved by the award of the Tribunal fixing the liability on the owner by holding that the deceased was an unauthorised passenger in a goods vehicle of the first respondent/owner.

2. The facts leading to the filing of the instant appeal may not be necessary in view of the order that this Court proposes to pass.

3. It is the case of the appellants/claimants that though the policy of insurance states that the carrying capacity of the vehicle is zero, the cover note shows that seating capacity is two; that since the deceased was a guide to the driver, he is an authorised passenger as per the cover note bearing No.CCN1308793; and that the insurance company should be made liable to pay compensation.



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4. Though notice sent to the owner of the vehicle has been served and his name printed in the cause list, none has entered appearance.

5. The learned counsel for the insurance company/second respondent, per contra, submitted that admittedly, the cover note was not produced before the Tribunal and that a photo copy of the cover note was only produced before this Court. On instructions, the learned counsel, further, submitted that the insurance company had not issued any such cover note from their office and therefore, the burden is on the appellants to establish that the cover note was issued by the second respondent.

6. This Court has given its careful consideration to the submissions made on both sides and materials on record.

7. The quantum of compensation is not under challenge. The only dispute is whether the first respondent or the second respondent should be made liable to pay the compensation. By virtue of the terms of the policy of insurance, if the deceased was an authorised passenger, the second respondent would be liable to pay compensation. Since the appellants had



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not produced the cover note before the Tribunal, this Court is of the view that one opportunity can be given to the appellants to establish before the Tribunal that the cover note was, in fact, issued by the second respondent for the offending vehicle, wherein the seating capacity was shown as two. Therefore, this Court deems it fit to remit the matter to the Tribunal for adjudicating this issue.

8. It is needless to mention that the claimants have to prove the cover note in the manner known to law. It is open to the second respondent to raise all the defences that are permissible in law. The Tribunal may decide the issue based on the evidence without being influenced any of the observations made by this Court.

9. The Tribunal shall adjudicate this issue as expeditiously as possible and in any event, not later than three months from the date of receipt of a copy of this order.



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10. With these observations, this Civil Miscellaneous Appeal is

allowed. No costs.

23.10.2024

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

To

1. The Special District Judge [MACT]/Motor Accidents Claims Tribunal,
Madurai.

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



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SUNDER MOHAN,J

apd

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