



C.M.A.(MD).No.1250 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1250 of 2017

and

C.M.P(MD) No.12044 of 2017

The National Insurance Company Limited,
Binominate Road,
Contonment,
Tiruchirapalli.

... Appellant/2nd Respondent

-VS-

1. S.Sudarsan

... 1st Respondent/Petitioner

2. Kayalvizhi

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 1004 of 2006, dated 13.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Court, F.T.C. No.II, Tiruchirapalli.

For Appellant : Mr.D.Sivaraman

For Respondents : No appearance



C.M.A.(MD).No.1250 of 2017

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed in M.C.O.P.No. 1004 of 2006, dated 13.02.2012 on the file of the Motor Accident Claims Tribunal, Additional District Court, F.T.C. No.II, Tiruchirapalli, primarily on the ground of liability.

2. According to the claimant, he had traveled in a TATA Sumo car owned by the first respondent and insured with the second respondent in the claim petition. According to the claimant, the vehicle was driven in a rash and negligent manner by the driver and he dashed against a Tamarind Tree. In the said accident, he had sustained injuries and he prayed for a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) towards compensation.

3. The Insurance Company had taken a defence in their additional counter affidavit that the Tata Sumo vehicle is covered by an Act policy only. Therefore, the Injured claimant being a passenger in the said Car is not covered by the said Policy.



C.M.A.(MD).No.1250 of 2017

WEB COPY

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that though the vehicle is a private vehicle, it has been used as a passenger vehicle at the relevant point of time and the driver was not having a badge for driving of the Tata Sumo Maxi Cab. On the said ground, the Tribunal has proceeded to award a sum of Rs.82,000/- (Rupees Eighty Two Thousand only) to the claimant with a direction to the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the vehicle. Challenging the said award, the present appeal has been filed.

5. According to the learned counsel appearing for the appellant/ Insurance Company, the policy is an Act policy and therefore even assuming that the injured claimant was a gratuitous passenger in the said vehicle the Insurance Company would not be liable to pay the compensation. Therefore, the order of pay and recovery is liable to be set aside.

6. Though notices were served upon the claimant and the owner of the vehicle, they have not chosen to appear either in person or through their counsel.



C.M.A.(MD).No.1250 of 2017

WEB COPY

7. I have carefully considered the submission made by the learned counsel for the appellant.

8. The policy of the vehicle involved in the accident has been marked as Ex.R1. A perusal of the said policy, indicates that it is a private car policy with private car liability only policy. Therefore, it is clear that the said policy covers only the third parties. The owner cum driver and the employees of the insured person are not covered as passengers. In the present case, admittedly, the injured claimant has travelled as a passenger in the Tata Sumo vehicle and no other offending vehicle is involved in the said accident. Even assuming that only a gratuitous passengers in the said vehicle, and the vehicle was not used for hire, still he is not covered under the Insurance Policy. When there is no coverage, the question of order of pay and recovery would not arise.

9. In view of the above said deliberations, the award of the Tribunal imposing order of pay and recovery as against the appellant/Insurance Company is hereby set aside. The appellant/Insurance Company is exonerated from the liability. In other respects, the liability is mulcted upon the second respondent in the appeal, namely, the owner of the Tata Sumo. In other respects the award of the Tribunal stands confirmed.



C.M.A.(MD).No.1250 of 2017

WEB COPY

10. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.04.2024

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

1. The Motor Accident Claims Tribunal,
Additional District Court, F.T.C. No.II,
Tiruchirapalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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C.M.A.(MD).No.1250 of 2017

C.M.A(MD)No.1250 of 2017

30.04.2024