



C.M.A.(MD).No.400 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.400 of 2017

and

C.M.P(MD) No.4349 of 2017

The Manager,
The Oriental Insurance Company Limited,
Dwarka IIInd Floor,
No.79, Uttamar Gandhi Salai,
Chennai – 600 034.

.....Appellant/Respondent No.2

-VS-

1. A.Subbammal
2. P.Soundarapandian

... 1st Respondent/Petitioner
... 2nd Respondents/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No.1 of 2014, dated 16.04.2015 on the file of the Motor Accident Claims Tribunal cum Principal Sub Court, Dindigul.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.T.Antony Arulraj – for R2
: No appearance – for R1



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J U D G M E N T

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The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accident Claims Tribunal cum Principal Sub Court, Dindigul, in M.C.O.P.No. 1 of 2014, primarily on the ground of liability.

2. According to the claim petition, the injured claimant had travelled in a Minidor Auto (goods vehicle) on 03.07.2006 for the purpose of attending a temple festival. While the said goods vehicle was travelling between Kodankipatti to Puliymarathukottai near Malliyapuram Bus stop, the driver of the Minidor Auto had driven it in a rash and negligent manner and it got capsized. In the said accident, the claim petitioner sustained injuries and hence, she had prayed for compensation of Rs.5,00,000/- (Rupees Five Lakhs only).

3. The first respondent in the claim petition, who is the owner of the Minidor Auto, had filed a counter contending that, though the driver of the vehicle refused to permit the petitioner to travel in the goods vehicle, she compelled the driver to take her in the goods vehicle. Therefore, the owner is



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no way liable to pay the compensation. That apart, the vehicle was insured with the second respondent/Insurance Company and hence they alone are liable to pay the compensation.

4. The second respondent had filed counter, taking a specific stand that the injured claimant had travelled in the goods vehicle and therefore, they are not liable to pay the compensation.

5. The Tribunal after considering the submissions made on either side in Paragraph No.18 of the order had arrived at a specific finding that the injured claimant had travelled in the goods vehicle on payment of charges and therefore, it is a case of policy violation. On the said finding, the trial Court had passed an award directing the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the goods vehicle. The owner of the vehicle has not chosen to challenge the award. The present appeal has been filed by the Insurance Company, challenging the award of pay and recovery.



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6. According to the learned counsel appearing for the appellant, since the injured claimant had travelled in a goods vehicle as a paid passenger, she is not covered by the policy. When there is no coverage, the question of pay and recovery would not arise. He further pointed out that in the claim petition it is specifically admitted that they have travelled as a passenger for the purpose of attending a temple festival.

7. Per contra, the learned counsel appearing for the second respondent /owner of the vehicle had contended that the driver of the Minidor Auto had refused to entertain the injured claimant as a passenger. However, the petitioner and others compelled the driver to take the injured claimant as a passenger. Therefore, the owner of the vehicle is not liable to pay the compensation. That apart, he submitted that when the goods vehicle was insured with the appellant/Insurance Company they are liable to satisfy the award without seeking to recover the said amount from the owner of the goods vehicle.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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9. There is no dispute with regard to the quantum of compensation. The issue arises for consideration is whether the entire liability has to be mulcted upon the Insurance Company based upon the policy taken by the owner of the vehicle or the Insurance Company can be directed to satisfy the award and thereafter recover the same from the owner of the vehicle.

10. A perusal of the claim petition clearly indicates that the injured claimant had engaged the goods vehicle on payment of charges for attending the temple function. The policy relating to a goods vehicle does not cover passengers in the said vehicle. It is not the case of the claimant that she had travelled in the goods vehicle, as owner of the goods or load woman. Further, it is clear that the policy does not cover the passengers in a goods vehicle.

11. When there is no coverage of policy, then the question of pay and recovery would arise. The judgment of the Hon'ble Division Bench of our High Court reported in **2018 (2) TNMAC 731 (Bharati Axa General Insurance Company Limited Vs. Aandi and others)** has categorically held that the gratuitous passengers in a goods vehicle are not entitled to receive any compensation from the Insurance Company and the question of directing pay and recovery would not arise in such cases.



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12. In view of the above said facts, the award of the Tribunal in so far it imposes liability on the appellant/Insurance Company is concerned, is set aside. The Insurance Company is exonerated from the liability to pay the compensation. In other respects the award of the Tribunal stands confirmed.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. The amount deposited by the appellant/Insurance Company shall be refunded to them along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Motor Accident Claims Tribunal cum Principal Sub Court,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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