



C.M.A.(MD).No.427 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)No.427 of 2017

and

C.M.P.(MD)No.4250 of 2017

Royal Sundaram Alliance Insurance Company Ltd.,
No.113/114, Sir Thiyagaraya Road,
4th Floor, Meena Kampala Arcade,
T.Nagar, Chennai – 600 017,
Rep. by its Branch Manager.

... Appellant

-VS-

1.Alagar

2.Govindan

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 12.07.2016 made in MCOP No. 350 of 2014 on the file of the Motor Vehicles Accident Claims Tribunal, Kulithalai and allow this appeal.

For Appellant : Mr.M.Jerin Mathew

For Respondents : Mr.T.Vadivelan (R1)

No appearance (R2)



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ORDER

The present appeal has been filed by the insurance company challenging the award of pay and recovery passed in MCOP No.350 of 2014 on the file of the Motor Accident Claims Tribunal, Kulithalai.

2. As per the claim petition, the deceased was travelling as a cleaner in a tractor on the date of the accident. When he accompanied the driver, the driver of the Tractor had driven the vehicle in a rash and negligent manner and the said vehicle had capsized. In the said accident, the deceased had sustained grievous injuries. Hence, he made a claim for a sum of Rs.8,00,000/- as compensation. The insurance company filed their counter contending that the claimant had travelled as an unauthorized passenger and therefore, there is no policy coverage for such unauthorized passenger.

3. The Tribunal, after considering the oral and documentary evidence, has arrived at finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the Tractor. The Tribunal further found that since the cleaner is not permitted to be accompanied with the driver, as far as the tractor is concerned, there is a policy violation and has proceeded to award pay and recovery. The Tribunal has fixed the



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compensation of Rs.2,22,060/-. Challenging the said award, the present appeal has been filed by the Insurance Company.

4. A perusal of the policy would clearly indicate that the seating capacity is only one and therefore, neither any other passenger nor a cleaner could accompany a driver in a tractor. The policy covers only one person namely driver. Since the deceased person had travelled in the tractor as an unauthorized passenger and there is no coverage for such unauthorized passenger, the question of pay and recovery would not arise. Hence, he prayed for setting aside the order of pay and recovery and the entire liability may be mulcted upon the owner of the Tractor.

5. Per contra, the learned counsel appearing for the first respondent contended that cleaner is entitled to travel along with the driver. The cleaner should be a third party to the contract of insurance and therefore, he is also covered under the policy. In such circumstances, the Tribunal was right in holding that it is only a policy violation and it is not the case of non-coverage. Therefore, the order of pay and recovery may be sustained.



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6. I have considered the submissions made on either side and perused the materials placed before this Court.

7. Even as per the claim petition, the deceased had travelled in the tractor as a cleaner. A perusal of the insurance company policy indicates that the tractor has got only one seating capacity and therefore, it is not permissible for a cleaner or any other person to sit and travel along with the driver in a tractor. Therefore, the cleaner should only be considered to be an unauthorized passenger in the said vehicle. The perusal of the policy further indicates that it covers only driver and not any other person.

8. The Hon'ble Supreme Court of India in the case of ***Oriental Insurance Company vs. Nattbi Bai and Others (SLP (C)No.3900 of 2006*** has categorically held that travel in the mudguard of the tractor would only be considered to be an unauthorized one and therefore, they are not covered under the policy.

9. The Division Bench of this Court in ***Bharati AXA General Insurance Co. Ltd., Rep. By its Manager, Bangalore vs. Aandi & Others (2018 (2) TNMAC 731)*** has categorically held that if there is no coverage



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relating to unauthorized passengers, a direction cannot be issued to the insurance company to pay and recover.

10. In view of the judgments of the Hon'ble Supreme Court of India and also the Division Bench of this Court, the Tribunal was not right in ordering pay and recovery, when there is no coverage of the injured person at all. In such circumstances, the award of the Tribunal insofar as the order of pay and recovery as against the appellant insurance company is hereby set aside. The first respondent in the claim petition / the second respondent in the appeal, who is the owner of the tractor is mulcted with the entire liability.

11. This Court does not find any reason to interfere with the quantum of award passed by the tribunal. In such circumstances, this appeal is allowed exonerating the insurance company and the entire liability is fixed upon the second respondent in the appeal. This civil miscellaneous appeal is partly allowed to the extent stated above. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
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R.VIJAYAKUMAR, J.

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To

1. The Motor Accident Claims Tribunal cum IV Additional District Judge,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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