



C.M.A.(MD).No.132 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.132 of 2020

and

Cross Obj (MD) No.33 of 2024

and

C.M.P(MD) Nos.2379 of 2020 and 3751 of 2024

C.M.A(MD)No.132 of 2020:

M/s.New India Assurance Company Limited,
Represented by its Branch Manager,
Branch Office,
480, Sakkalai Road,
Karaikudi – 630 001.

... Appellant/2nd Respondent

-vs-

1. Ayyavoo

... 1st Respondent/Petitioner

2. P.R.Vairavan

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order dated 13.04.2016 made in M.C.O.P.No.79 of 2009, on the file of the Motor Accident Claims Tribunal-cum- Chief Judicial Magistrate Court, Sivagangai.

For Appellant : Mr.Y.Prakash

For R1 : Mr.P.Balasubramanian

For R-2 : No appearance



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1.Ayyavoo

... Cross Objector/1st Respondent

-Vs-

1. M/s.New India Assurance Company Limited,
Branch Office,
480, Sakkalai Road,
Karaikudi – 630 001.

... 1st Respondent/Appellant

2.PR.Vairavan

... 2nd Respondent/2nd Respondent

PRAYER: Cross Appeal filed under Order 41 Rule 22 of Civil Procedure Code, against C.M.A(MD) No.132 of 2020 as against the order passed in M.C.O.P.No.79 of 2009, dated 13.04.2016, on the file of the Motor Accident Claims Tribunal- cum- Chief Judicial Magistrate Court, Sivagangai, and set aside the same and allow this Cross Objection.

For Cross Objector : Mr.P.Balasubramanin

For Respondents : Mr.Y.Prakash – for R1
No appearance – for R2

COMMON JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company, challenging the award passed in M.C.O.P.No. 79 of 2009, on the file of the Motor Accident Claims Tribunal- cum- Chief Judicial Magistrate Court, Sivagangai, primarily, on the ground of liability.



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2. According to the injured claimant, while he was travelling in a goods vehicle, the driver had driven the vehicle in a rash and negligent manner and had got capsized. According to the injured claimant, he was 42 years old, he was an agricultural labourer and was earning a sum of Rs.4,500/- per month. The claimant has prayed for compensation of Rs.8,00,000/- (Rupees Eight Lakhs only).

3. The Insurance Company has filed a counter contending that more than seven passengers have travelled in a goods vehicle as gratuitous passengers. Therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, has arrived at a finding that the driver of the Van had carried more persons in the loading area and therefore, treated it as violation of policy condition and hence, directed the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the vehicle. The Tribunal has proceeded to fix the total compensation at Rs.6,82,375/- (Rupees Six Lakhs Eight Two Thousand Three Hundred and Seventy Five only). Challenging the order of pay and recovery, the present appeal has been filed by the Insurance Company.



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5. According to the learned counsel appearing for the appellant, when the Tribunal has arrived at a finding that the injured claimant had travelled in the loading area as a gratuitous passenger, ought not to have directed the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the vehicle. He further contended that the gratuitous passengers in a goods vehicle are not covered under the Policy and when there is no coverage the order of pay and recovery would not arise.

6. Per contra, the learned counsel appearing for the first respondent herein relying upon Ex.P.1-FIR had contended that they are not gratuitous passengers and they have travelled in a goods vehicle along with the owners of the goods. Hence, he prayed for sustaining the mulcting of liability upon the Insurance Company to pay the award.

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

8. A perusal of Ex.P.1-FIR reveals that the injured claimant along with seven other persons have travelled in the goods vehicle in the loading area along with the vegetables which they have purchased for the purpose of



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marriage of their relative. This aspect has not been disputed by the Insurance Company. Therefore, it is clear that the injured claimant has not traveled in the goods vehicle as a gratuitous passenger. But, he has travelled as one of the owners of the goods. However, more than seven persons have travelled in the loading area and therefore, it is a clear case of violation of policy condition. The Tribunal has rightly directed the Insurance Company to satisfy the award and thereafter, to recover the same from the owner of the goods vehicle. In such circumstances, I do not find and reason to interfere in the mulcting of liability by the Tribunal on the Insurance Company and there are no merits in this appeal.

9. The claimant has filed the Cross Objection seeking enhancement of compensation.

10. The primary contention of the learned counsel appearing for the cross objector is that the injured claimant being agricultural labour, the monthly income ought not to have been fixed at Rs.4,000/- and that it should have been fixed at Rs.5,000/- per month. The Hon'ble Supreme Court in a judgment reported in **2014(1) TNMAC 459 (SC) (Syed Sadiq, etc Vs. The Divisional Manager, United India Insurance Company)**, has fixed the



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notional income at Rs.6,500/- for the accident that has taken place in the year 2008. Considering the said fact, this Court is of the opinion that fixation of Rs.4,000/- as notional monthly income for an accident that has taken place in the year 2002 is very reasonable and there is no ground for enhancing the said notional income. The award passed by the Tribunal under the other heads are also reasonable and there is no scope for enhancement of compensation. In such circumstances, there are no merits in this Cross Objection.

11. Accordingly, this Civil Miscellaneous Appeal and the Cross Objection stand dismissed. The injured claimant is permitted to withdraw the entire award amount. There shall be no order as to costs. Consequently connected Miscellaneous petitions stand closed.

10.07.2024

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

1. The Motor Accident Claims Tribunal- cum-
Chief Judicial Magistrate Court,
Sivagangai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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