



C.M.A(MD)No.44 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.44 of 2020

and

C.M.P(MD)No.768 of 2020

The Branch Manager,
New India Assurance Company Limited,
Door No.1419, Tenkasi Road,
Rajapalayam Town,
Virudhunagar District.

... Appellant/3rd Respondent

Vs.

1.R.Devi

2.R.Suresh

3.Minor R.Veeramani

4.Minor R.Renuga Devi

*(Minor respondents 3 and 4 natural
guardian mother R.Devi first respondent
herein)*

5.Subbammal

6.Kaliyappan

... Respondents 1 to 6/
Petitioners 1 to 6

7.Duraimurugan

... 7th Respondent/
1st respondent



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8.P.Paramasivam

... 8th respondent/
2nd respondent

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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment, dated 25.07.2019 made in M.C.O.P.No.179 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Virudhunagar District at Srivilliputhur and dismiss the claim against the appellant.

For Appellant : Mr.B.Vijay Karthikeyan

For R-1 to R-6 : Mr.K.Vinayagan

For R-7 : No appearance

For R-8 : Mr.M.Karthikeyan

JUDGMENT

The third respondent in M.C.O.P.No.179 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Virudhunagar at Srivilliputhur is the appellant herein.

2. The respondents 1 to 6 herein as claimants had filed the above claim petition seeking compensation for the death of one K.Ravi. According to the claimants, on the date of the accident, he was riding a bicycle in the left corner of the road. At the relevant point of time, the



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Mahindra Scorpio jeep owned by the eighth respondent and driven by the seventh respondent and insured with the appellant came in a rash and negligent manner and dashed against the said bicycle. Due to the said impact, the said Ravi had sustained grievous injuries and passed away. The claimants have claimed a sum of Rs.20,00,000/- as a compensation.

3. The owner and driver of the Scorpio jeep have remained *ex parte*. The insurer had filed a counter disputing not only the involvement of the vehicle but further contending that the vehicle is insured only under a private car package policy. At the relevant point of time, the Mill workers were carried in the said Scorpio car which is against the policy conditions. Therefore, they are not liable to pay compensation.

4. Considering the submissions made on either side, the Tribunal has arrived at a finding that the vehicle belonging to the eighth respondent is involved in the said accident. It also arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the seventh respondent. The Tribunal in paragraph No.15 of the award has arrived at a finding that the offending vehicle was used for the purposes of carrying Mill workers at the relevant point



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of time. However, they have not carried any goods in the said vehicle.

Therefore, the policy covers the accident and has proceeded to award a compensation of Rs.14,20,000/-. Challenging the said award, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

5. According to the learned Counsel appearing for the Insurance Company, they have taken a specific stand in the counter that the vehicle was used for the purposes of carrying Mill workers, at the relevant point of time, which is clearly in violation of policy conditions. He further pointed out that P.W.3, who was one of the occupants of the offending vehicle has categorically stated that the vehicle was used for the purpose of carrying Mill workers. Therefore, when there is a violation of policy conditions, the Tribunal ought not to have mulcted the liability upon the Insurance Company and the Tribunal ought to have passed an award of pay and recovery, permitting the Insurance Company to recover the said amount from the owner of the Scorpio car for violation of the policy conditions.

6. The learned counsel appearing for the 8th respondent had contended that the evidence of P.W.3 cannot be taken into consideration



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for the purpose of mulcting the liability on the owner of the vehicle. He further contended that at the time when the accident has taken place the Mill workers were not available in the vehicle. That apart, the vehicle was insured with the appellant/Insurance company and therefore, they are liable to pay compensation.

7. I have carefully considered the submissions made by the learned counsel on either side.

8. It is the specific case of the Insurance Company that Mahindra Scorpio jeep has been insured under private car package policy, which is marked as Exhibit R.1. They have taken a specific stand in the counter that the vehicle was used for the purpose of carrying Mill workers, which is in violation of the policy conditions. Their case is supported by the deposition of P.W.3. The Tribunal has also arrived at a specific finding in paragraph No.15 of the award that, the vehicle was used for the purpose of carrying Mill workers. Therefore, it is clear that the vehicle has been used in violation of the policy conditions at the relevant point of time. When there is violation of policy conditions, the Insurance Company cannot be mulcted with liability without permitting them to



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recover the same from the insured person, who has violated the policy conditions. The Tribunal had erred in not ordering pay and recover in favour of the Insurance Company.

9. In view of the above said deliberations, the award passed by the Tribunal stands modified. The Insurance Company shall pay the entire award amount and thereafter, recover the same from the owner of the vehicle. To the said extent, the award of the Tribunal is modified. In other respects, the award stands confirmed.

10. In the result, this Civil Miscellaneous Appeal stands partly allowed. The Insurance Company is directed to deposit the balance amount along with interest within a period of eight (8) weeks from the date of receipt of a copy of this judgment. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

17.04.2024

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

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1. Motor Accident Claims Tribunal
(Chief Judicial Magistrate Court),
Virudhunagar District at Srivilliputhur.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR/ebsi

Judgment made in
C.M.A(MD)No.44 of 2020

17.04.2024