



C.M.A.No.1101 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1101 of 2022
and C.M.P.No.8070 of 2022

M/s.IFFCO-TOKIO General Insurance Co. Ltd.
28/195, North Usman Road,
T.Nagar, Chennai – 600 017.

... Appellant

vs.

1.G.Munusamy

2.M.Ellammal

3.S.Agathiyan

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 03.02.2022 made in M.C.O.P.No.4031 of 2010 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 and R2 : Mr.K.Premkumar

For R3 : No Appearance



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The Civil Miscellaneous Appeal has been filed by the Insurer challenging the award passed by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai in M.C.O.P.No.4031 of 2010, dated 03.02.2022.

2. The respondents 1 and 2 are the claimants. It was their case before the Tribunal that their son namely M.Mohan died in a road accident that had taken place on 10.09.2010 involving mini lorry bearing Registration No.TN-21-D-8010 belonged to the 3rd respondent and insured with the appellant-insurance company. According to the claimants, the deceased was travelling in a Mini lorry belonged to the 3rd respondent and driver of the mini lorry had driven the vehicle in rash and negligent manner and applied sudden break in a turning. As a result of rash and negligent driving, the vehicle got capsized and deceased sustained grievous head injury and died in hospital. Therefore, a claim petition was filed seeking compensation of Rs.15,00,000/-.



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3. The 3rd respondent-owner of the mini lorry remained *exparte* before

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the Tribunal and the claim petition was contested by the insurer of the mini lorry mainly on the ground that deceased travelled in a goods vehicle as a gratuitous passenger along with 25 other persons loaded with Vinayaga Idol and therefore, the Insurance Company was not liable to pay the compensation.

4. Before the Tribunal, the 1st respondent/1st claimant was examined as PW.1 and an eye-witness was examined as PW.2. On behalf of the respondents 1 and 2/claimants, 10 documents were marked as Exs.P1 to P10. On behalf of the appellant Insurance Company, one Geetharani was examined as RW.1 and Regional Legal Manager of Insurance Company was examined as RW.2 and 3 documents were marked as Exs.R1 to R3.

5. The Tribunal based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the mini lorry and held that the appellant-Insurer was liable to pay compensation as insurer of the mini lorry. The amount payable to the claimants was quantified at Rs.9,97,000/-. Aggrieved by the



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liability fixed on the Insurance Company, the present Civil Miscellaneous Appeal has been filed.

6. The learned counsel appearing for the Appellant/Insurance Company would submit that the deceased and 25 persons had travelled in a goods vehicle and therefore, the deceased could only be treated as gratuitous passenger and accordingly, the Insurance Company is not liable to honour the award.

7. The learned counsel appearing for the respondents 1 and 2/claimants would submit that as per the terms of Insurance Policy, employees of the insured other than the driver not exceeding the number of persons permitted in registration document will be covered by the policy and hence, the Tribunal was justified in holding that the appellant was liable.

8. It is the specific argument of the learned counsel appearing for the Appellant/Insurance Company that deceased travelled as a gratuitous passenger in a goods vehicle and hence, appellant was not liable. On the



contrary, it was the specific case of the claimants that deceased travelled as a cleaner in the cabin of the goods vehicle and hence, as per the policy condition, the Insurance Company is liable to pay compensation.

9. In order to prove that the deceased travelled as a cleaner, the 1st claimant father of the deceased was examined as PW.1. He in his proof affidavit clearly stated that the deceased had travelled in the cabin of the vehicle as cleaner. In the cross examination, he clearly deposed that the above said fact came to his knowledge through his younger son-M.Chandrasekar, who travelled along with the deceased. He also clearly deposed that deceased was cleaner at the time of accident. However, no documentary evidence has been produced to prove that he was employed as cleaner. The oral evidence of PW.1 was corroborated by PW.2 namely above said M.Chandrasekar. He was a co-passenger along with the deceased and he also clearly deposed that deceased travelled as a cleaner in the vehicle.

10. The best person to speak about the employment of the deceased as a cleaner is the owner of the mini lorry. Though he was arrayed as



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1st respondent in the original petition, he failed to appear before the Court and remained *exparte*. Therefore, the claimants are entitled to take advantage of the absence of the owner of the vehicle. Notwithstanding service of notice in the claim petition, wherein claimants had stated that deceased was a cleaner under him, he failed to appear and oppose the plea. The Registration Certificate of the mini lorry was marked as Ex.R1 through the appellant side witness one Geetharani, who was examined as RW.1. She clearly admitted that as per Registration Certificate of mini lorry, three persons were permitted to travel in that vehicle. RW.1 also admitted that cleaner and load man could travel in the vehicle. An Officer of the Appellant/Insurance Company was examined as RW.2 and he in his proof affidavit claimed that deceased travelled as a gratuitous passenger. In his cross examination, he admitted that they had examined owner of the vehicle and his driver in their private enquiry. However, their statement had not been produced before the Court.

11. When the Insurance Company enquired the owner and driver, the statement made by them should have been produced before the Court to throw more light on the real facts. The failure of the Insurance Company to



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produce the statement of the insured and his driver would amount to withholding the best evidence available with them. RW.2 also clearly admitted that three persons were entitled to travel in the said vehicle. In the light of the evidence of PW.1 and PW.2 and admissions of RW.1 and RW.2, we can safely come to the conclusion that deceased travelled in the cabin of the vehicle as a cleaner. As mentioned earlier, PW.1 and PW.2 in their evidence clearly deposed that the deceased travelled as a cleaner in the goods vehicle. Therefore, the deceased cannot be termed as an unauthorised gratuitous passenger in a goods vehicle and hence, the objection made by the learned counsel appearing for the appellant in this regard is without any substance.

12. The limitations of the insurance policy have been clearly described in the Insurance Policy, which was marked as Ex.R3. The same is extracted as follows:-

“Limitation as to use:

Goods Carrying Vehicles – Class A

Use only for Carriage of goods within the meaning of the Motor Vehicle Act.

The Policy Does not Cover.



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1. Use for Organised racing, pace making, reliability trail or speed testing.

2. Use whilst drawing a trailer except the towing (other than reward) of any one disabled mechanically propelled vehicle.

3. Use for carrying passengers in the vehicles: except employees (other than the Driver) not exceeding the number permitted in the registration document and coming under the purview of workmen's Compensation Act 1923.

Use of Trailers

Where additional premium paid for Trailers amend (2) to read:

Use whilst towing any trailer/s, except the trailer/s insured with the company, or the towing (other than for reward) of any one disabled mechanically propelled vehicle.”

13. A perusal of the endorsement in the policy regarding limitations would indicate that the policy does not cover passengers in the vehicle except employees (other than driver) not exceeding with number permitted in the Registration Document. The Registration Certificate of the vehicle was marked as Ex.P10. A perusal of the same would indicate that the seating capacity of the vehicle including the driver is three. Here the claim petition has been filed only in respect of one person, who according to the



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claimants travelled in the cabin in his capacity as cleaner. Therefore, in view of the Policy Condition, the insurer is liable to pay compensation to the employee of the insured namely the cleaner of the vehicle. Hence, the conclusion reached by the Tribunal that the Appellant/Insurance Company was liable to honour the award is based on proper appreciation of evidence available on record. Therefore, I do not find any reason to exonerate the Appellant/Insurance Company from the liability of honouring the award.

14. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

30.04.2025

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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To

1.The Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.

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S.SOUNTHAR, J.

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