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C.M.A.No.1079 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1079 of 2020

And

C.M.P.No.6847 of 2020

The United India Insurance Co. Ltd.,
No.235, Gamdhi Market Road
Arani Town
through
United India Insurance Co. Ltd.,
Motor Third Party Service Hub,
AR Plaza, 35-37, 45 ft. Road Extn.,
Balaji Nagar, Saram,
Puducherry – 605 011.

... Appellant

Vs.

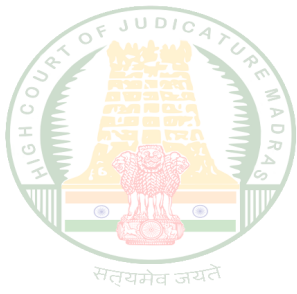
1.Krishnaveni
2.Rani
3.A.K.Srinivasan

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, by setting aside the order and decree dated 04.11.2016 in M.A.C.T.O.P.No.179 of 2007, on the file of the Motor Accidents Claims Tribunal, Arani (Subordinate Court, Arani) Thiruvannamalai District.

For Appellant : M/s.P.Sankaranarayanan
For Respondents : R1 – Died vide memo
Mr.T.Paranthaman for R2
R3 – No Appearance



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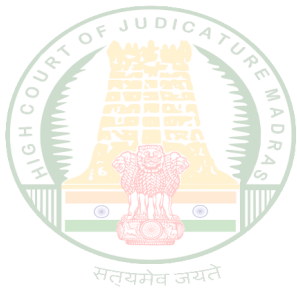
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J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 04.11.2016 in M.A.C.T.O.P.No.179 of 2007, on the file of the Motor Accidents Claims Tribunal, Arani (Subordinate Court, Arani) Thiruvannamalai District.

2.The learned counsel appearing for the appellant submitted that the respondents 1 and 2/ Mother and wife of the deceased Selvam filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.8 Lakhs alleging that on 24.05.2007 at about 11.00 p.m., when the deceased Selvam was travelling in the Tractor bearing Registration No.TN-25/V-6754, Tractor No.TN-25/V-6755 in Arni to Vandavasi Main Road, near Erikalvai Bridge at Ayilavadi Village, the driver of the said vehicle drove the vehicle in a rash and negligent manner, due to which, the vehicle was put into a pit and the deceased died on the spot.

3.The learned counsel appearing for the appellant further submitted that after adjudication, the Tribunal awarded a sum of



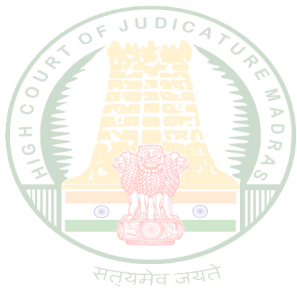
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Rs.7,44,928/- as compensation to the claimants along with interest at 7.5% p.a. from the date of the petition till the date of realization with proportionate costs and directed the appellant to deposit the amount and to recover the same from the third respondent. The learned counsel further submitted that the first respondent/ first claimant died during the pendency of this appeal.

4.The learned counsel appearing for the appellant further submitted that in tractor only the driver alone is entitled to travel and no other person is authorized to travel in a tractor. Hence, the deceased travelled as an un-authorized passenger in the tractor and therefore, the claimants are not entitled to claim any compensation as against the appellant Insurance Company. The learned counsel further submitted that this Court may fasten the entire liability on the third respondent. In support of his contentions, the learned counsel relied upon the decision of the Hon'ble Division Bench of this Court reported in **2018 (2) TN MAC 731 (DB) [Bharati AXA General Insurance Co. Ltd., Vs. Aandi and others]**.

5.The learned counsel appearing for the second respondent did



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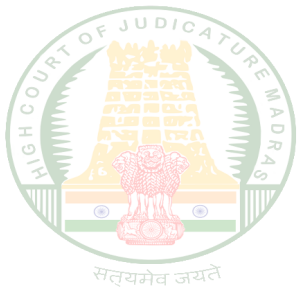
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not dispute the facts submitted by the learned counsel appearing for the appellant.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent. Though the name of the third respondent has been printed in the cause list, there is no representation for the third respondent. Considering the pendency of the civil miscellaneous appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

7.The facts of the case is not in dispute. Admittedly, the deceased travelled in a tractor. In tractor only the driver alone is entitled to travel and no other passenger is entitled to sit either in the mud guard or in other parts of the tractor and in trailer no one is allowed to travel. Hence, the deceased travelled as an un-authorized passenger in the vehicle involved in the accident.

8.The issued involved in the present case is covered by the decision of the Hon'ble Division Bench of this Court reported in **2018**



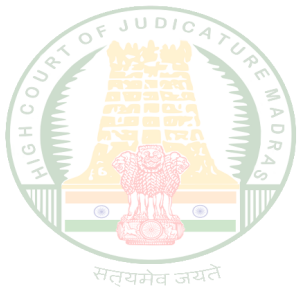
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(2) TN MAC 731 (DB) [Bharati AXA General Insurance Co. Ltd.,

Vs. Aandi and others], the relevant portion of the same reads as follows:

"50. In fact, we find that in none of the judgments referred to viz., **National Insurance Co. Ltd. Vs. Swarn Singh & Ors.** reported in (2004) 3 SCC 297, **Mangla Ram Vs. Oriental Insurance Co. Ltd.** reported in (2018) 5 SCC 656, **Rani & Ors. Vs. National Insurance Co. Ltd. & Ors.** reported in 2018 (9) Scale 310 and **Manuara Khatun and Others Vs. Rajesh Kumar Singh And Others** reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in **Shivaraj Vs. Rajendra and another** referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble



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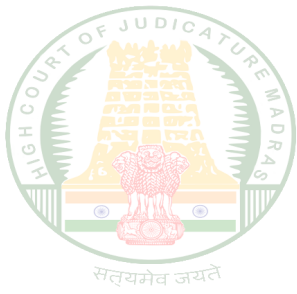


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Supreme Court in **New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others** referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.

52. In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle viz., 1st respondent in all the Original Petitions and the award against the Insurance Company will stand set aside. However, in view of the fact



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that the claimants are not before us. We do not impose any costs. Consequently, the connected Miscellaneous Petitions are closed."

9.Applying the ratio laid down in the decision cited supra, the civil miscellaneous appeal is allowed. The judgment and decree dated 04.11.2016 in M.A.C.T.O.P.No.179 of 2007, on the file of the Motor Accidents Claims Tribunal, Arani (Subordinate Court, Arani) Thiruvannamalai District, is set aside as against the insurer/ appellant. The appellant Insurance Company is permitted to withdraw the entire amount already deposited by them, if any. Since the first respondent/ first claimant has died, liberty is granted to the second respondent/ second claimant to recover the award amount from the third respondent/ owner of the vehicle in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

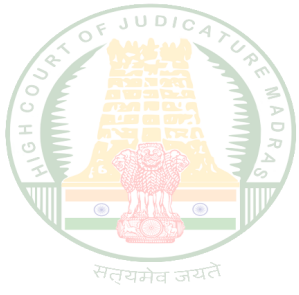
28.01.2025

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To
1.The Motor Accidents Claims Tribunal,
Arani (Subordinate Court, Arani)
Thiruvannamalai District.

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M.DHANDAPANI,J.
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