

C.M.A.(MD) No.750 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.750 of 2021

Sarasu

... Appellant

vs.

1. Mathankumar (died)
2. The Branch Manager,
Reliance General Insurance Company Limited,
Trichy.
3. Ganesan
4. Pothumani

(Respondents 3 and 4 are brought on record as LR's of the deceased 1st respondent vide Court Order dated 27.01.2022 made in C.M.P(MD) No.11349 of 2021)

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award passed in M.C.O.P.No.709 of 2016 on the file of the Motor Accident Claims Tribunal and Additional District Court, Pudukkottai dated 23.02.2021.

For appellant : Mr.K.C.Maniyarasu

For Respondents : Mr.V.Sakthivel for R2

: No appearance for R3 and R4



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J U D G M E N T

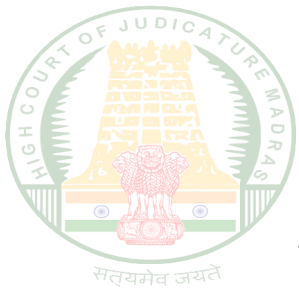
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This Civil Miscellaneous Appeal has been preferred by the claimant against the award dated 23.02.2021 made in M.C.O.P.No.709 of 2016 passed by the Motor Accident Claims Tribunal / Additional District Court, Puddukottai, on the issue of liability.

2. Despite the receipt of the notice, the respondents no.3 and 4 neither appeared nor entered appearance through counsel.

3. Heard the arguments of the learned counsel for the appellant and the learned counsel for the second respondent / Insurance Company.

4. Upon consideration, the Tribunal did not accept the contention of the claimant that she travelled as a owner of the goods and held that she travelled as a gratuitous passenger. Since some 35 persons had travelled in a goods carriage vehicle and ultimately, it was concluded that the owner had violated the policy conditions by permitting 35 persons to travel in the goods carriage vehicle and the entire liability was fastened on the first respondent / owner of the TATA Ace Lorry.



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5. The learned counsel for the appellant would strongly contend that when the vehicle was proceeding to Chellakkampatti, the appellant got into the vehicle on the way with a bag of paddy and agreed to pay Rs. 50/- as charges. While so, the vehicle met with an accident near Kodumbalur Pidariyamman Temple due to the rash and negligent driving of the driver of TATA Ace Goods Vehicle and it turned topsy-turvy. It is his further contention that as the claimant travelled as the owner of the goods, the Insurance Company is liable to pay compensation to the claimant herein.

6. Whereas, the learned counsel for the second respondent / Insurance Company would vehemently argue that the claimant was travelling in the first respondent vehicle namely TATA Ace Goods carriage vehicle along with 34 other persons in order to attend baby shower ceremony and she cannot be considered as a owner of the goods. Hence, as the owner of the said vehicle has violated the policy conditions by permitting 35 persons to travel in a goods carriage vehicle, which is a clear violation of the policy condition. Therefore, the insurance company is not liable to pay compensation. In order to buttress his arguments, he placed reliance of the following judgments.

1. National Insurance Co. Ltd vs Cholleti Bharatamma & Others reported in 2008 (1) SCC 423.



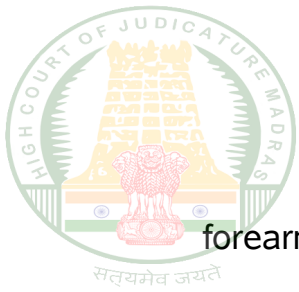
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2. *National Insurance Co.Ltd vs Rattani & Others* reported in 2009 (2) SCC 75.

7. At trial, to substantiate the claim, the petitioner has examined as P.W.1 and 11 documents were marked. On the side of the second respondent / Insurance Company, the staff of Pudukottai Road Transport Officer and Area Manager of the Reliance General Insurance Company have been examined as R.W.1 and R.W.2, and 5 documents were marked. Ex.P3 is the copy of the Insurance policy. Ex.P4 is the copy of the Motor Vehicle Inspector's Inspection Report. Copy of the Registration Certificate of the TATA Ace Vehicle is Ex.R5.

8. It has come on record through the evidence of P.W.1 that when the TATA Ace goods vehicle bearing registration No.TN 76 U 1303 was proceeding to Chellakkampatti, she got into the vehicle with a bag of paddy and agreed to pay Rs.50/- as charges. While the vehicle was proceeding towards Chellakkampatti near by Kodumbalur Chathiram, when she along with the persons who were to attend the baby shower ceremony at about 10.00 a.m., due to the rash and negligent driving of the driver of the TATA Ace vehicle, the vehicle suddenly turned to the left side of the road and turned topsy-turvy. Due to the said impact, her



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forearm got cut off.

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9. Per contra, from the evidence of P.W.1 coupled with contents of Ex.P1 - First Information Report, It appears that the vehicle was proceeding to Chellakkampatti with 35 passengers in order to attend the baby shower function. It appears that some 31 persons and the driver inclusive of the claimant Sarasu W/o Chinnu sustained injuries. One of the injured person had lodged a complaint and a case was registered against the driver of the TATA Ace goods carriage vehicle. Whereas, P.W.1 would state that she got into the vehicle with a bag of paddy and agreed to pay Rs.50/- as charges was not accepted by the Tribunal.

10. As per Ex.R5 – Registration Certificate, the vehicle involved in the accident is a Light Goods Vehicle and it is a goods carriage vehicle. Therefore, it is pellucid that about 31 persons sustained injuries on account of the accident. Policy is a package policy (Ex.R3). Therefore, it is pellucid that the claimant had travelled as a passenger and not as a owner of the goods.

11. It is the evidence of RW.2 that the vehicle involved in the accident is a Light Goods Vehicle. The claimant herein has travelled as a passenger along with other 34 persons. The owner of the said vehicle



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has violated the policy conditions by permitting the driver of the goods carriage vehicle for carrying passengers. The fact that some 35 persons travelled in the goods carriage vehicle and the claimant was one among them and the plea of the claimant to the effect that she got into the vehicle along with one bag of paddy and agreed to pay Rs.50/- as charges was outrightly rejected by the Tribunal.

12. Based on the aforesaid details, this Court is of the firm view that the claimant herein had travelled as one of the passenger to attend the baby shower ceremony in a goods carriage vehicle and the goods carriage vehicle was used for carrying passengers, which is in utter violation of policy condition.

13. In the facts and circumstances of the case, the inescapable conclusion is that the claimant has travelled in the Light Goods Vehicle as a gratuitous passenger and in that view of the matter, the insurance company is not liable to pay compensation as it is a clear violation of the policy condition. This Court does not find any infirmity or perversity in the finding of the learned Tribunal and finds no good reason to disturb the finding of the Tribunal as regards the liability.

14. Based on the aforesaid discussions and observations, this Civil



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Miscellaneous Appeal stands dismissed. There is no order as to costs.

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28.01.2025

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

1. The Motor Accident Claims Tribunal,
Additional District Court, Pudukkottai

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R.KALAIMATHI,J.,

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