



C.M.A.No.772 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.09.2025

Pronounced on : 17.10.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.No.772 of 2002

The Branch Manager,
United India Insurance Company Limited,
Thanjavur.

... Appellant/ 2nd Respondent

Vs.

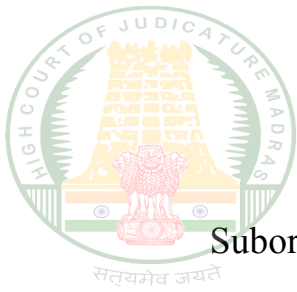
1.Valarmathy

...1st Respondent / 2nd Petitioner

2.K.Rengasamy Thevar,
Proprietor of K.R.Roadways,
Uranipuram,
Orathanadu Taluk,
Thanjavur District.

...2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 30.07.2001 made in M.C.O.P.No.276 of 1997 on the file of the



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Subordinate Court, Motor Accident Claims Tribunal, Pudukkottai and

allow this Civil Miscellaneous Appeal.

For Appellant : Mr.N.Dilipkumar

For Respondents : Mr.C.Sureshkannan

for Mr.A.Thiruvadikumar – for R1 to R3

Mr.Srinivasaraghavan – for R5

Dispensed with – R4

Memo recorded - R6

JUDGMENT

The appellant/2nd respondent Insurance company has filed this Civil Miscellaneous Appeal against the fair and decretal order dated 30.07.2001 made in M.C.O.P.No.276 of 1997 by the learned Subordinate Judge, Motor Accident Claims Tribunal, Pudukkottai.

2.The brief case of the claimants is as follows:-

On 16.07.1997, one Solai who was the driver of the bus bearing registration No.TN 49-B 0955 drove the vehicle from Pattukkottai to Pudukkottai. When the bus was nearing Karambakkudi,



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the said Solai drove the vehicle in a rash and negligent manner without observing any traffic regulation. When he attempted to overtake a cyclist in front, he lost control of the bus and the bus was trembling down twice in Pudukulam tank abutting the main road. It was overloaded with 110 passengers. The deceased Santhosh Kumar was travelling in the bus besides his parents and brothers, he died on the spot. Nearly 50 persons got seriously injured in the accident. The driver and son of the claimants also died instantaneously. The accident was due to rash and negligent driving of the driver Solai. So the 1st respondent is liable to pay for the damages suffered by the claimants, as the owner of the vehicle bearing registration No.TN 49 B 0955. The deceased was aged about 10 years and he was studying 5th Standard. He was a bright student with good educational career and was outstanding student and his death cannot be measurable in terms of money. The claimants restricted their claim to the tune of Rs.5,00,000/- for the death of their son.

3. The second respondent, insurance company filed the counter by disputing the manner of the accident and stated that the driver was not driven the vehicle in a rash and negligent manner. But when the driver overtook the cyclist by swerving to the right to avoid hitting the



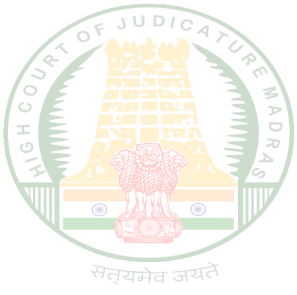
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cycle, the mud portion of the road gave way and the vehicle capsized.

WEB COPY The accident occurred due to the lack of road facility.

4. The second respondent also filed an additional counter statement, contending that the 1st respondent had violated the terms and condition of the policy. As per the policy, the vehicle was permitted to carry only 56 passengers plus 2 staff, however at the time of accident, it was carrying around 110 passengers. The 1st respondent thus carried many 52 passengers in excess of the permitted capacity, which contributed to the cause of accident. The second respondent further contented that the policy coverage extended only to the passengers lawfully permitted to be carried. The deceased was not a passenger within the meaning of the terms of policy as interpreted in its proper context and therefore the second respondent is not liable to pay any compensation.

5. During trial, on the side of the petitioner, P.W.1 was examined and Exs.P1 to P4 were marked. On the side of the respondents, R.W.1 was examined and Ex.R1 was marked.



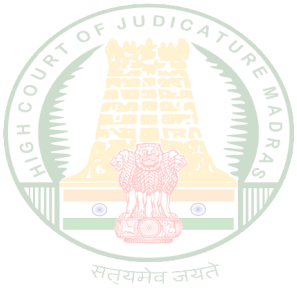
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6. After hearing all the parties and perusing the records, the Tribunal awarded a sum of Rs.1,50,000/- as compensation and the respondents are jointly and severally liable to pay the compensation within a period of one month.

7. Aggrieved by the said order of the Tribunal, the present Civil Miscellaneous Appeal has been filed by the Insurance Company, which was the 2nd respondent before the Tribunal challenging the liability fastened upon them. The appellant contends that the Tribunal, erred in directing the insurance to pay compensation on the erroneous assumption that carrying passengers in excess of the permitted limit would not amount violation of the terms and condition of the policy. The appellant submits that the insured had carried more passengers than their number, permitted under the policy, thereby constituting a clear breach of its condition and hence, the insurance company cannot be made liable to pay compensation.

8. Heard the learned counsel on either side and perused the materials available on record.



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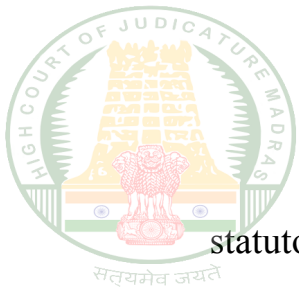
9. Now, this Court has to decide the following point for

consideration:-

Whether the accident occurred as result of the bus being overloaded with passengers, thereby constituting a violation of policy condition ?

10. Point

In this case, the vehicle is a passenger vehicle. Ex.P.1 is the FIR dated 16.07.1997 registered by the Karambakudi Police Station, against the driver of the bus, in which it was stated that on the date of occurrence, the bus was carrying around 110 persons. While attempting to overtake a bicycle, the bus lost balance and over turned, resulting in the accident. The same fact was reiterated in the claim petition and the claimant admitted the same in the evidence. However, both in the FIR and during the trial, it was stated that the accident occurred due to the rash and negligent act of the driver. Ex.B1 is the policy issued in respect of the bus bearing Registration No.TN 49 D 0955 which covered only 55 passengers. Therefore, carrying around 110 passengers at the time of accident amounts to breach of policy condition. However, such a breach of the policy by the insured does not absolve the insurer from its

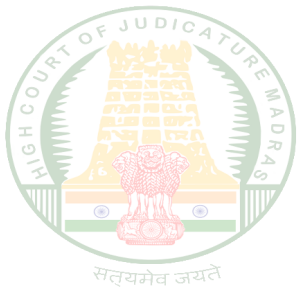


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statutory liability towards third party under section 149 (1) of the Motor Vehicles Act, 1988. The deceased who was travelling in the bus was a third party and he cannot be suffered for the violation by the 1st respondent (owner of the vehicle).

11. A Fundamental breach of policy occurs when one party fails to perform an obligation that goes to the root of the contract. Such a breach may entitle the aggrieved party to terminate the contract or claim damages.

12. However in the present case, the claim for compensation has been made by the third party. The insurance company cannot raise the defence of fundamental breach of policy against the party. Furthermore, the appellant has failed to established that the accident occurred solely due to the overloading of passengers. However, both in the complaint and in the evidence, it has been clearly stated that the accident occurred due to the rash and negligent act of the driver of the bus. Insurance company has not produced any rebuttal evidence to establish that the accident took place as a result of overloading of the passengers.



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13. In this connection, we rely upon the judgement rendered

in 2016 (3) *Supreme Court Cases – 100 [Lakhmi Chand vs. Reliance*

General Insurance] in which the Hon'ble Supreme Court has held as follows :

“Held, to avoid liability. The insurance company must not only establish defence claimed, but also establish that breach of policy was so fundamental that it ended contract/that breach concerned caused the accident. Mere factum of carrying more passengers than permitted capacity in goods carrying vehicle by insured does not amount to fundamental breach of terms of policy.”

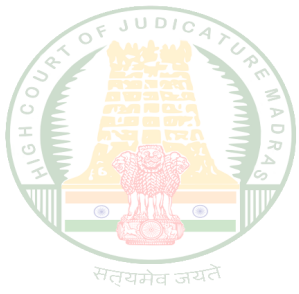
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14. Further in *National Insurance Company Limited Vs. Swaran Singh and others* a three-Judge Bench of this Court has held as under : (SCC pp.325 & 330-31, paras 49, 52 & 69)

“49. Such a breach on the part of the insurer must be established by the insurer to show that not only the insured used or caused or permitted to be used the vehicle in breach of the Act but also that the damage he suffered flowed from the breach.”

.....

16. It becomes very clear from a perusal of the abovementioned case law of this Court that the insurance company, in order to avoid liability must not only establish the defence claimed in the proceeding concerned, but also



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establish breach on the part of the owner/insured of the vehicle for which the burden of proof would rest with the insurance company. In the instant case, the respondent Company has not produced any evidence on record to prove that the accident occurred on account of the overloading of passengers in the goods-carrying vehicle. Further, as has been held in B.V. Nagaraju [B.V. Nagaraju v. Oriental Insurance Co. Ltd., (1996) 4 SCC 647] that for the insurer to avoid his liability, the breach of the policy must be so fundamental in nature that it brings the contract to an end. In the instant case, it is undisputed that the accident was in fact caused on account of the rash and negligent driving of the offending vehicle by its driver, against whom a criminal case vide FIR No. 66 of 2010 was registered for the offences referred to supra under the provisions of IPC. These facts have not been taken into consideration by either the State Commission or the National Commission while exercising their jurisdiction and setting aside the order of the District Forum.....”

The judgment reported above squarely applicable to the present case. In this present case also the appellant has failed to prove that the accident occurs due to overloading of passengers. On the contrary, it has been proved that the accident occurred due to rash and negligent act of the 1st respondent's driver. Therefore, the insurance company cannot evade its liability on the mere ground of overloading, as the proximate cause of the



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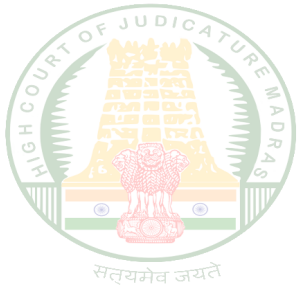
accident was the negligence act of the driver and not alleged breach of police condition of a third party passenger. The point is answered accordingly.

15. In such view of the matter, this Civil Miscellaneous Appeal is dismissed and the impugned order passed in MCOP.No.276 of 1997, dated 30.07.2001 by the Motor Accident Claims Tribunal (Subordinate Judge), Pudukkottai is hereby confirmed. The appellant/Insurance Company is directed to deposit the award amount with accrued interest at the rate of 7.5% per annum and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the 1st respondent/2nd claimant is permitted to withdraw the amount, less the amount already withdrawn, if any, together with proportionate interest and costs, by filing an appropriate petition before the Tribunal. No costs.

17.10.2025

Index : Yes / No
NCC : Yes / No
RM

10/12



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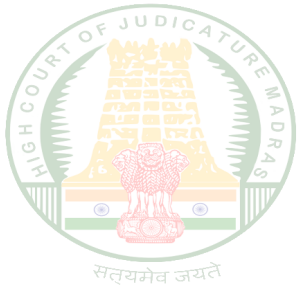
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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Pudukkottai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

Judgment in

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