**(2018) 01 MAD CK 0349**

**In the Madras High Court**

**Case No :** 868 of 2017

The New India Assurance Co.Ltd. APPELLANT

Vs

Alamelu & Anr. RESPONDENT

**Date of Decision :** 02-01-2018

**Acts Referred:**

**Citation :** (2018) 01 MAD CK 0349

**Hon'ble Judges :** S.Baskaran

**Bench :** Single Bench

**Advocate :** Neethi Perumal

**Final Decision :** Dismissed

# Judgement

1. The appellant/Insurance Company, who suffered a decree/award passed by the Motor Accident Claims Tribunal (Additional District Judge,

Fast Track Court, No.1,) Salem, dated 27.10.2006 in MACTOP No.1490 of 2004, has come forward with the present Civil Miscellaneous

Appeal.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The Petitioner was carrying

on business as fruit merchant. On 20.05.2004, the Petitioner/claimant, who was owner of goods, was travelling in a Minidoor Auto bearing

Reg.No.TN-30-E-9141, belonging to 1st respondent along with other co-passengers, from Chinnakadai Veedhi to Periyapudhur. While the said

minidoor auto was nearing Chevvaipettai Kalliamman Koil, the driver of the said vehicle driven it in a rash and negligent manner at high speed,

which resulted in the accident, thereby, the petitioner and the co-passengers suffered grievous injuries. The petitioner has preferred a claim petition in M.C.O.P.No.1490 of 2004 before the Tribunal, seeking compensation of Rs.5,00,000/- for the grievous injuries suffered by her.

3. On the other hand, opposing the claim petition, the appellant herein/2nd respondent, while disputing the nature of accident, contended that the

accident did not occur in the manner as alleged by the Petitioner and it occurred only due to overloading of goods and at the time of accident, 6

passengers travelled along with their goods, which is not permitted and as such, the overloading of goods and travel of more passengers clearly

indicate the violation of Policy conditions and therefore, they are not liable to pay the compensation for the victim of said accident and prayed for

dismissal of the claim petition.

4. To substantiate the claim, the Petitioner/injured examined herself as P.W.1, the co-passegers were examined as P.Ws.2 to 4 in respect of other

MCOPs and Dr.Shanmuga Priya and Dr.S.Rajamanickam, who treated the petitioner and other co-passengers, were examined as P.Ws.5 and 6.

In respect of M.C.O.P.No.1490 of 2004, Ex.A.1-FIR, Ex.A.2-Accident Register and Ex.A.3-Discharge summary, Ex.A.4-C.T.Scan Bill for

Rs.350/- has been produced before the Tribunal. On the side of 2nd respondent/ Insurance Company, R.W.1-M.Rajkumar was examined and

Ex.B.1-Policy was marked.

5. The Tribunal, on the basis of oral and documentary evidence placed before it, concluded that the Petitioner/injured has established her claim and

passed an Award granting compensation of Rs.62,440/- to the injured claimant. The Tribunal also directed the 2nd respondent/Insurance

Company to pay the compensation amount to the Petitioner and to recover the same from the owner of the vehicle/1st respondent before the

Tribunal.

6. Aggrieved over the above said finding of the Tribunal, the present Civil Miscellaneous Appeal is filed by the 2nd respondent/ Insurance

Company viz., the appellant herein.

7. The injured claimant/petitioner, in his claim petition has stated that on 20.05.2004, at about 2.00 a.m., while she was travelling in a Minidoor

Auto bearing Reg.No.TN-30-E-9141 owned by the 1st respondent along with her goods, due to careless and rash driving by the driver, the

vehicle met with an accident and she suffered severe injuries. The Petitioner produced a copy of FIR, registered in connection with the occurrence

as Ex.A.1. Further, it is evident from the oral evidence of P.Ws.1 to 4, viz., the Petitioner and the co-passengers, who filed their respective claim

Petitions, that the accident took place only due to negligence of the driver of the vehicle. It is also evident from their evidence that including the

driver and cleaner of the Minidoor auto, 6 persons travelled in the vehicle, which is a clear violation of Ex.B.1 Policy.

8. As stated above, the evidence available on record clearly establishes the negligent driving of the vehicle driver, which ultimately resulted in the

accident, as alleged by the Petitioner. The said fact is not disputed or seriously challenged by the 2nd respondent/Insurance Company/appellant

herein. However, the learned counsel appearing for the Insurance Company contended that the finding of the Tribunal is contrary to the settled

principles of law in the light of the clear cut terms and conditions of Policy that the vehicle can carry only 2 persons and the other fact that no

additional premium amount was paid to cover the risk of non-fair paying passenger and as such, they are not liable to pay any amount as

compensation and sought to entertain the appeal.

9. This court perused the records and also the oral evidence let in by both sides before the Tribunal.

10. The Tribunal has categorically found that there is violation of policy condition, nevertheless, the 2nd respondent as an Insurer, is liable to pay

the award amount and further gave liberty to them to recover the same from the owner of the vehicle/1st respondent before the Tribunal.

11. Considering the facts and circumstances of the case, it is clear that there was no permission to carry six persons in the Minidoor Auto and as

such, it is clear violation of policy conditions. In such circumstances, the contention of the appellant/Insurance Company, that they are not liable to

pay the compensation, appears to be just and proper. However, keeping in mind the fact that the creation of Motor Accident Claims Tribunal and

procedure for adjudication of claim has been provided with a view to implement the welfare legislation and the interpretation of provision of law is

required to be made so as to help the victim, it is clear that the Tribunal passed the Award directing the Insurance Company to pay the

compensation to the injured claimant, with liberty to recover the same from the owner of the vehicle, thereafter. Since the appellant/Insurance

Company has not agitated any other issue except the issue of liability by contending that they are not liable to pay compensation in view of the

violation of Policy Conditions, this court is of the view that the conclusion arrived at by the Tribunal that after paying the compensation amount, the

Insurance Company can recover the same from the owner of the vehicle holds good and the same needs no interference. In the result, the finding

of the Tribunal/Additional District Judge, Fast Track Court No.1) Salem, made in M.A.C.T.O.P.No.1490 of 2004 dated 27.10.2006 is

confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected CMP is closed.

 