



C.M.A. (MD) No. 729 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.09.2023

Pronounced on : 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.729 of 2014

The Branch Manager,
United India Insurance Co. Ltd.,
Kottaiyam.

... Appellant/
2nd Respondent

Vs.

1. Zaheer Husain

... 1st Respondent/
Petitioner

2. Biju

... 2nd Respondent/
1st Respondent

3. The New India Assurance Co. Ltd.,
SNV-Chambers 3rd Floor
482, 483 Crosscut Road
Gandhipuram, Coimbatore.

... 3rd Respondent/
3rd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the judgment and decretal award



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passed in M.C.O.P.No.510 of 2004, dated 22.08.2012, on the file of the MACT, Addl. Sub Court, Tenkasi and the appeal filed by this appellant is to be allowed.

For Appellant	: Mr.A.S.Mathialagan
For R1	: Mr.M.Saravanan
For R2	: No appearance
For R3	: Mr.S.Sarvagan Prabhu

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.510 of 2004 dated 22.08.2012 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi.

2. The appellant/insurer, who was made liable to pay compensation of Rs.3,03,720/- (Rupees Three Lakhs Three Thousand Seven Hundred and Twenty only) with interest at 7.5% per annum to the first respondent/claimant, for the damages suffered to his car, consequent to an accident occurred on 23.07.2003, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimant is that on 23.07.2003 at about 01.30 p.m., when the claimant was driving his Toyota Qualis car bearing Registration No.TN-38-R-7022 from West to East in Rajapalayam to Srivilliputhur main road, near Janakiram Spinning Mill, a Tempo Trax bearing Registration No.KL-06-B-4224, which came in the opposite direction in a rash and negligent manner, had dashed against the Qualis car and as a result of which, the Qualis car got completely damaged.

4. It is the further case of the claimant that the damaged vehicle was taken to workshop at Coimbatore by private towing truck, that he had spent more than Rs.4 lakhs for repair work, that mini video, audio and AC machines in the vehicle worth about Rs.50,000/- got damaged and that the claimant's family was depending only on the income of the claimant and due to the damage of the vehicle, he was not in a position to work as before and sustained loss of income.



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5. Admittedly, the Tempo Trax bearing Registration No.KL-06-B-4224 was owned by the first respondent and the same was insured with the second respondent and that the Toyota Qualis car bearing Registration No.TN-38-R-7022 owned by the claimant was insured with the third respondent.

6. The defence of the second respondent is that the accident was occurred only due to the rash and negligent driving of the claimant himself and that the first respondent's driver was not at fault and the compensation claimed is excessive.

7. The second respondent through additional counter statement has taken an additional defence that the Tempo Trax was allowed by the first respondent to drive in Tamil Nadu jurisdiction without obtaining permit, that the vehicle was authorized to ply all public roads in Kerala State only and that therefore, the first respondent has violated the policy conditions and permit under the provisions of the Motor Vehicles Act.

8. During trial, the claimant has examined himself as P.W.1 and 2 other witnesses Subbaiah and Jaimanohar as P.W.2 and P.W.3 respectively



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and exhibited 11 documents as Ex.P.1 to Ex.P.11. The first respondent had remained *ex parte*. The second respondent has examined 2 witnesses as R.W.1 and R.W.2 and exhibited 5 documents as Ex.R.1 to Ex.R.5. 2 witness documents were exhibited as Ex.X.1 and Ex.X2. One Court document was exhibited as Ex.C.1.

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award dated 22.08.2012 by holding that the first respondent's driver was responsible for the accident and mulcted liability on the second respondent and directed them to pay compensation of Rs.3,03,720/- with interest and costs and dismissed the claim petition as against the third respondent. Aggrieved by the impugned award, the second respondent has preferred the present appeal.

10. It is pertinent to note that the second respondent has not challenged the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of the Tempo Trax driver.



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11. The main contention of the second respondent is that the Tempo Trax bearing Registration No.KL-06-B-4224 was only authorized to ply in Kerala State and the first respondent has not obtained any permit to ply the vehicle in Tamil Nadu and that therefore, the Tribunal erred in mulcting the entire liability on it.

12. It is evident from Ex.R.4-permit copy of the Tempo Trax vehicle that the route / area for which the permit was given is shown as all public roads in Kerala State. The second respondent has examined its official as R.W.2 and he would reiterate their contentions raised in the counter statement as well as in the additional counter statement. During cross-examination, it was suggested by the claimant's side that the police authorities have not included any charge in the charge sheet for violation of the permit and no other action was taken for the same, he would admit the said suggestion. Though the claimant has attempted to canvass an argument that there is every possibility for taking a temporary permit to enter into Tamil Nadu, there is absolutely no evidence to prove the same. As already pointed out, the first respondent has remained *ex parte*. As rightly contented by the learned counsel appearing for the second



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respondent, since the accident was occurred at Rajapalayam and the first respondent has obtained permit for the Tempo Trax vehicle to ply the same in Kerala State, it can be easily inferred that the first respondent, by allowing the vehicle to ply in Tamil Nadu, has violated the permit conditions.

13. At this juncture, it is necessary to refer the judgment of the Chhattisgarh High Court in *National Insurance Company Ltd. Vs. Khorin Bai Sori and others* reported in **2021 (5) ALL MR 69** and the relevant passages are extracted hereunder:-

“7. The necessity to have a valid permit to use a transport vehicle in public place has been asserted by the Apex Court stating that the absence will definitely amount to the defence in terms of Section 149 (2) (c) of the Act, 1988 as held in National Insurance Co. Ltd. v. Challa Bharathamma and Others reported in (2004) 8 SCC 517. (The name of the said case was subsequently corrected by the Apex Court as “National Insurance Co. Ltd vs. Challa Upendra Rao and Others”, (2004) 8 SCC 517) Whether the absence of permit is a 'fundamental breach' or a 'technical breach' was considered elaborately by a Five Member Bench of the High Court of Kerala in Pareed



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Pillai vs. Oriental Insurance Co. Ltd reported in 2018 SCC Online Ker 3542 (authored by P.R.Ramachandra Menon,CJ.), holding that it is a fundamental breach and not a technical breach. The legal position has been reiterated by the Apex Court as per judgment in Amrit Paul Singh and Another v. Tata AIG General Insurance Co. Ltd. & Others reported in 2018 (7) SCC 558. Once such breach is established, the Apex Court has made it clear, that the compensation paid by the Insurer to the Claimants can be got recovered from the Owner and Driver of the vehicle for operating the transport vehicle without valid permit at the relevant time.

.....

10 The Driver and Owner did not have a case that the vehicle registered in the Karnataka was having any local permit to have operated in the State of Tamilnadu (where the accident occurred) on the date of the accident and as such, no presumption could have been made by the Tribunal merely on surmises or conjunctures. The Award passed by the Tribunal has extended premium to the wrongdoer i.e. Driver and Owner, which is not the intention of the legislation. No law can be interpreted in favour of a wrongdoer; more so, when the Driver and Owner did not contest the matter either before the Tribunal or before this Court, despite the completion of service of notice.



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11. In the above circumstance, we hold that the violation of the permit has been pleaded and proved by the Appellant. In the said circumstances, they are entitled to have 'right of recovery' after satisfying the claim towards the 3rd party / Claimants. It is ordered accordingly. Once the claim is satisfied with interest, as ordered by the Tribunal, it is open for the Appellant to proceed with further steps for recovery of the same from the Respondents No.2 and 3/Driver and Owner of the vehicle by way of appropriate proceedings in accordance with law."

14. But the Tribunal, without considering the above legal aspects in proper perspective, has mulcted the entire liability on the second respondent and as such, the same is liable to be set aside. Consequently, this Court is of the view that it is a fit case to apply the doctrine of pay and recovery and is applied accordingly.

15. Now turning to the quantum of compensation, the claimant has produced the quotation and bills under Ex.P.7 to Ex.P.9. According to the claimant, he has purchased the spare parts for Rs.1,75,120/- through the bills under Ex.P.8 and he has produced the bills for Rs.32,750/- and



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Rs.35,850/- paid to Francis Auto Garage and N.M.Auto Garage under Ex.P.9. The claimant has produced a Xerox copy of the bill issued by N.M. Auto Garage separately as Ex.P.10 and since it was a Xerox copy, the Tribunal has refused to accept the same. But it is evident from the above records that the original of Ex.P.10 was produced along with the bills issued by Francis Auto Garage under Ex.P.9. Though the learned counsel appearing for the second respondent has raised objections with regard to granting of compensation as per Ex.P.8 and Ex.P.9, as rightly contended by the learned counsel appearing for the claimant, the second respondent has not specifically disputed the genuineness of the bills nor the contents of the bills under Ex.P.8 and Ex.P.9. During cross-examination of the claimant, except suggesting that the bills produced by him are bogus, there was no cross-examination with respect to the said bills and nothing was elicited by them in their favour.

16. R.W.1, in his cross-examination, would say that “விபத்துக்கு பின்னர் மனுதார் வாகனத்தை மதிப்பீட்டாளர் எவரும் ஆய்வு செய்தார்களா என்று எனக்கு தெரியாது. எங்கள் மதிப்பீட்டாளர் ஆய்வு செய்யவில்லை. என்னென்ன நடைமுறைகள் பின்பற்றப்பட்டுள்ளது என்பது எனக்கு தெரியாது. வழக்கு தொடர்பாக களப்பணியாளர் ஒருவரை நியமித்து



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அவர் மூலம் அறிக்கை பெறப்பட்டுள்ளது என்றால் சரி தான். அதனை
தாக்கல் செய்யவில்லை. அதற்கு காரணம் ஏதுமில்லை.□

17. It is evident from the records that the second respondent has summoned Alankar Auto Spares, where the claimant has purchased his spare parts, but the cover has been returned and the same was exhibited under Ex.C.1. As rightly contended by the learned counsel appearing for the claimant, the second respondent has not taken any further action in that regard. In the absence of any contra evidence, the decision of the Tribunal in accepting the bills and granting the bill amount at Rs.1,75,120 and Rs.68,600/- under Ex.P.8 and Ex.P.9, cannot be found fault with.

18. The case of the claimant is that he suffered loss of income for 24 months and had attached a C.F.X form with respect to the Toyota Qualis car and that himself and his family members were depending on the income derived from the said car and claimed loss of income for 24 months. But the Tribunal, taking note of the evidence available on record, has granted loss of income for 6 months at Rs.10,000/- per month and granted Rs.60,000/-, total compensation of Rs.3,03,720/-. Considering the



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above, the compensation awarded by the Tribunal cannot said to be excessive.

19. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal mulcting liability on the appellant/insurer is set aside. The appellant/insurer is directed to deposit the award amount with interest at 7.5% per annum from the date of petition till the date of payment to the credit of M.C.O.P.No.510 of 2004 on the file of the Motor Accident Claims Tribunal/Additional Subordinate Court, Tenkasi, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. Thereafter, the appellant/insurer is permitted to recover the same from the second respondent/first respondent as per law. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs,



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on due application before the Tribunal. The parties are directed to bear their own costs.

19.10.2023

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

1. The Motor Accident Claims Tribunal/
Additional Subordinate Court,
Tenkasi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.729 of 2014

Dated : 19.10.2023