



CMA.Nos.2339 & 2357 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 26.02.2024 and clarified on 09.07.2024	Pronounced on 30.10.2024
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2339 & 2357 of 2021

And

C.M.P.No.13129 of 2021

C.M.A.No.2339 of 2021:-

United India Insurance Co. Ltd.,
1170, Muthaiah Complex
Erode 638 011

... Appellant

Vs.

1.Murugan @ Murugesan, 32 years
S/o.Subramani
Residing at 133, Poojaripoithotty
Ramapuram Post, Kollekal Taluk
Samraj Nagar District
Karnataka State
2.Prakash
S/o.Subramani,
Residing at No.58, Hasan Street



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Subramaniam Nagar
LIC Nagar Backside, Moolapalayam
Erode District 638 108
3.C.Mani
60, Periya Kattu Pathi
Vasanthanagar, Nathakadaiyur Post
Kangeyam Taluk
Tiruppur District 638 108

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.10.2019 made in MCOP.No.319 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.Ma.P.Thangavel (for R1)

C.M.A.No.2357 of 2021:-

1.Murugan @ Murugesan,
S/o.Subramani
Residing at 133, Poojaripothotty
Ramapuram Post, Kollekall Taluk
Samraj Nagar District
Karnataka State

... Appellant

Vs.

1.Prakash
S/o.Subramani,
Residing at No.58, Hasan Street
Subramaniam Nagar



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LIC Nagar Backside, Moolapalayam

Erode District 638 002

2.C.Mani

60, Periya Kattu Pathi

Vasanthanagar, Nathakadaiyur Post

Kangeyam Taluk

Tiruppur District 638 108

3.United India Insurance Co. Ltd.,

1170, Muthaiah Complex

Erode 638 011

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 24.10.2019 made in MCOP.No.319 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar (for R3)

COMMON JUDGMENT

These Appeals have been filed against the award and decree dated 24.10.2019 made in MCOP.No.319 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode.

2.The Insurance Company is the Appellant in CMA.No.2339 of 2021 and the claim Petitioner is the Appellant in CMA.No.2357 of 2021. For the sake of



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convenience, the parties are referred to as per their ranking before the trial

Court.

3.The factum of the accident and manner of the accident are not under challenge in this Appeal. The Insurance Company challenged the award on the point of liability and quantum and the claim Petitioner challenged the award on the point of quantum alone.

4.During trial, on the side of the claim Petitioner, PW1 was examined, Ex.P.1 to Ex.P.14 were marked and on the side of the Respondents, RW1 to RW5 were examined, Ex..R.1 to Ex.R.16 were marked. Ex.C.1 & Ex.C2 were marked as court document.

5.Heard the learned counsel for the claim Petitioner and the learned counsel for the Insurance Company.

Point for consideration:-

1. Whether the liability of insurance gets automatically exonerated?
2. What is the status of third party claim or such stated facts?



6(a).The claim Petitioner is suffered by accidental injuries and filed a claim Petition seeking compensation for the injuries sustained by him in a road transport accident occurred on 02.08.2016.

(b) Both in the pleadings as well as in the evidence, he has categorically stated that he has sustained multiple grievous injuries viz., right leg two bones fracture, right knee below bone fracture and right thigh fracture.

(c) The Insurance Company filed counter statement before the trial Court, disputed the liability on the point that the original owner of the offending vehicle, who is the second Respondent has taken a policy (Ex.P.13) with the Insurance Company and subsequently sold the vehicle to the first Respondent and therefore, the policy become cancelled.

7.Learned counsel for the Insurance Company contended that the Ashok Leyland Dost bearing registration no. TN-42 V-5351 has been earlier owned by the 2nd respondent and insured with 3rd respondent from 11.09.2015 to 10.09.2015. On 14.02.2016, the vehicle completely damaged in the accident and the 2nd respondent filed claim form with 3rd respondent and surveyor also reported that the vehicle is in an unusable condition and on total loss salvages basis, the claim was settled and the policy was cancelled and the same was



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intimated to Kangayam Regional Transport Officer on 24.03.2016 and the 2nd respondent was also intimated to produce the vehicle for cancelling the registration certificate with Regional Transport Officer. It is further contended that 2nd respondent inspite of producing the vehicle before Regional Transport Officer, he sold the vehicle to the 1st respondent after repairing the vehicle.

(b) In this connection, he relied upon Ex.R1/order of cancellation of policy. The cancellation of the policy was specifically disputed by R1/new owner and the claim Petitioner.

(c) The trial Court has summoned the RTO office and examined RW3/Junior Assistant, RW4/Accountant and RW5/Assistant from the RTO Office, Kangeyam, Erode & Bhavani Stage I, respectively. On perusal of the same, the trial Court has rendered a specific finding that Ex.R1, the alleged cancellation of policy does not bear any date. It is also pertinent to note that the Assistant Manager of the Insurance Company, who was examined as RW1 stated that he has admitted that in usual office procedure, in cancelled policy the date of cancellation and endorsement will be there. However, as observed by the trial Court, Ex.R1 does not disclose any signature being there and the same is admitted by RW1, during the cross examination.



8.The appellate insurance company has raised a specify plea that policy was cancelled and the same was intimated to the RTO. However, on a bear perusal of the evidence of RW3 (Staff from RTO), who was examined before the trial Court on court summons has categorically stated that in respect of the cancellation of policy of the impugned vehicle, no such order of cancellation policy was received by the RTO.

9. The learned counsel appearing for the appellant-Insurance Company has relied upon the documentary evidence and the official witnesses from the R.T.O office.

10. Lower Court records reveals that on Court summons, P.W.3-Saroja, Junior Assistant, R.T.O office, Kangeyam. R.W.5 Sivakumar, Accountant, R.T.O office Bhavani Stage-I were examined and Exs.R6 to R16 were marked. Ex.R6 is a requisition letter of cancellation of the Insurance policy to R.T.O. Ex.R9 is the ' B' Register maintained by the Sub Registrar office and Ex.R11 is the 'B' Register maintained by RTO office, Erode (East). Ex.R14 is the Screenshot of renewal of vehicle registration. Ex.R16 is the Cancelled



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Insurance policy copy. While Ex.R1 is the order of cancellation of Insurance Policy.

11. Mani who is the owner of the lorry who involved in the accident.

The subject matter of the accident is 02.08.2016.

12. According to the Mani who is examined as R.W.2 in the chief-examination, the vehicle lorry shall initially met with an accident on 14.02.2016 and in the said vehicle was totally damaged and hence, he made claim petition with the appellant-United Insurance Company. He has specifically averred that "ஓட்டமுடியாத நிலையில் தான் அந்த வாகனம் இருந்தது. எனவே, நான் அசல் இன்குரன்ஸ் பாலிசியை கம்பெனியில் சரண்டர் செய்துவிட்டேன். அந்த வாகனம் அதற்கு பின்னால் என்ன ஆனது என்று எனக்கு தெரியாது."

.....எனக்கு சொந்தமான இருந்த டி எண்.42 பி 5351 என்ற வாகனத்தின் என் மீது உள்ள பாலிசி ரத்து செய்யப்பட்டு தான் எனக்கு தொகை கொடுத்துள்ளார்கள்.

.....என்னுடைய வாகனம் சேதமானதற்கு இன்குரன்ஸ் நிறுவனம் கொடுத்த தொகையை நான் கையில் பெற்றுக்கொள்ளவில்லை. நத்தக்கடையூர் இண்டியன் வங்கியில் உள்ள என்னுடைய கணக்கிற்கு இன்குரன்ஸ் நிறுவனம் செலுத்திவிட்டார்கள்...



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13. Thus, the evidence chief and cross examination of R.W.2 is that, he is the original owner of the lorry. His lorry met with an accident and it is totally damaged, he made a claim petition with Insurance Company only on the surrender the policy and the policy was cancelled and money was given to him. In the cross examination, he had categorically admitted that, the amount was not mentioned in hand, but it was credited to his account in Indian Bank at Nathakadu branch. This vital part of the evidence appears to have been last sight by the Trial Court.

14. R.W.3-Saroja, who is a Junior Assistant, R.T.O office has categorically stated that:

.....இந்த பதிவேட்டின்படி இந்த வாகனத்தின் முதல் உரிமையாளர் சிமணி. அதன் பிறகு இந்த வாகனத்தின் உரிமையாளர் நிலையில் மாற்றம் ஏற்பட்டுள்ளது. 31.08.2016ல் எஸ்.அபுதாகிர், த/பெ.சாகுல் அமீர் என்பவர் பெயருக்கு வாகனம் உரிமை மாற்றம் செய்யப்பட்டது.

.....அபுதாகிர் என்பவர் பெயரிலிருந்து இந்த வாகனம் சிவசுப்பிரமணியம் என்பவர் பெயருக்கு ஈரோடு வட்டார போக்குவரத்து அலுவலகத்தில் மாற்றம் செய்யப்பட்டதாக குறிப்பிடப்பட்டுள்ளது. எங்கள் அலுவலக ஆவணப்படி இந்த 3 மாற்றங்கள் மட்டுமே நடைபெற்றுள்ளது.



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.....இந்த வாகனம் 27.09.2012 தேதியில் வாங்கப்பட்டது.

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அதற்கான தகுதி சான்றிதழ் 27.09.2016 வரை உள்ளது. தகுதி சான்றிதழ் என்பது ஆண்டுக்கு ஒரு முறை புதுப்பிக்க வேண்டும். 2வது முறை புதுப்பிக்கப்பட்ட தகுதி சான்றிதழ் 27.09.2016 வரை நிலுவையில் உள்ளது. இது 28.09.2015 தேதியில் இருந்த மனு கொடுத்ததின் பேரில் வழங்கப்பட்டுள்ளது. 28.09.2015 முதல் 27.09.2016 வரை உள்ள காலத்திற்கு இடைப்பட்ட காலத்தில் இந்த வாகனத்திற்கு மீண்டும் தகுதி சான்றிதழ் கேட்டமனு கொடுக்கப்பட்டுள்ளதா என்றால் அவ்வாறு பதிவு எதுவும் இல்லை.

.....தகுதி சான்றிதழ் இல்லாமல் வாகனத்தை பொது சாலையில் இயக்க முடியாது.

15. The second respondent herein-Mani is the first owner and the change of the ownership was effected on 31.08.2016. It was transferred to one Mr.Abudhagir and hence, I find that the pleading of the plaintiff is that the first respondent is the owner of the vehicle having purchased from the second respondent-Mani stands falsified by the official records spoken to by the official witness as stated supra. Furthermore, the vehicle was purchased on 27.09.2012 fitness certificate was valid only upto 27.09.2016 and subsequently, renewed based upon the requisition petition dated 28.09.2015.



16. In the cross-examination, he has admitted that between 28.09.2015 to 27.09.2016, no application has been received for renewal of Fitness Certificate license assumes significance.

17. R.W.5 Nallusamy, on court witness was examined and he is an Assistant in the R.T.O office.

18. In the instant case, it is a specific case of the appellant/Insurance Company that the insurance in respect of the vehicle was between the period 11.09.2015 to 10.09.2016.

19. The accident has taken place on 02.08.2016 even much before that the vehicle was met with an accident on 14.02.2016 and claim petition filed by the owner of the second respondent herein that he made a claim for total damage and for scarab he has received the amount and hence, on a combine reading of the evidence of R.W.2 coupled with Ex.R1 - order of cancellation of the Insurance policy and Ex.R6 - cancellation insurance policy and admission of the owner of the vehicle-Mani that he has received admitted charges and sewerage charges and hence, I find that after the vehicle was abundant the



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owner of the vehicle ought to have been informed the R.T.O office regarding condemning of the vehicle. However, total damage has been admitted by the owner and vehicle was in unrunning condition and cancellation of policy was also admitted. After cancellation of the policy, the vehicle was in unusable condition and on total loss salvages basis and hence, I find that the contention of Mr.Arunkumar, learned counsel for the Insurance Company that the vehicle has been condemned, since it is a total damage and after the settlement of the entire amount for the vehicle, the Insurance Company was duly cancelled and therefore, the Insurance Company has to be exonerated from liability is found to have force.

20. In the instant case when the amount has been settled in the month of March for previous the accident of the vehicle on 14.02.2016 and vehicle has been given as a total loss salvages basis, I find that the subsequent accident on 02.08.2016. The involvement of the vehicle in the said accident is highly doubtful. It appears that after the accident, the vehicle which is already abundant and for which is already paid totally lost salvages basis appears to have been impleaded in the case to claim the compensation.



21. At the disclosure of time, this Court finds itself as to whether the Insurance Company is liable to pay the compensation or not?

22. Since the involvement of the vehicle is concerned, specific admission of R.W.2, the owner of the vehicle and the vehicle was changed the hands from the said Mani to the Abudhagir only on 31.08.2016 as per official records as discussed supra. The pleadings in the petition that the first petitioner is the owner of the vehicle cannot be accepted in view of the records produced from the R.T.O office. As per the records, the transfer of ownership from Mani one Abudagir is only on 31.08.2016 and hence, on the date of the accident, it is the second respondent-Mani and hence, Mani alone the owner of the vehicle on the date of the accident is alone liable to pay the compensation and not Mani the Insurance Company since the policy was duly cancelled and informed to the owner and this fact was admitted by himself that he has also received the entire amount after cancellation of the policy and accordingly the C.M.A is filed by the Insurance Company is allowed and Insurance company C.M.a.Nol2739 of 2021 stands allowed. United Insurance company is exonerated.

23. On Quantum:-

As per Ex.P8 & Ex.P.9 discharge summaries, the claim Petitioner was admitted in Hospital on 02.08.2016 and discharged on 07.09.2016 and



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thereafter admitted in Duraisamy Ortho Hospital on 10.02.2017 and discharged on 25.02.2017 and hence, totally for 47 days, he was in the hospital. The Tribunal has rightly fixed the notional income of Rs.8,000/- for the claim Petitioner, who is the stone cutter and fixed the loss of earnings at Rs.96,000/-. The same is hereby confirmed. The Tribunal has awarded a sum of Rs.20,000/- towards transportation, the same is also hereby confirmed. As per Ex.P.7/Medical bills, the Tribunal has awarded a sum of Rs.3,70,000/- towards medical expenses. The same is also hereby confirmed.

24.The claim petitioner sustained injury in right leg and lost skin in both legs. Ex.P11 is the Photograph of the petitioner. The legs of the petitioner is completely disfigured and he cannot even have marital life as considering his age. The Tribunal has rightly adopted 16 as multiplier and fixed the disability at 50%. The same is hereby confirmed. At the time of the accident, the claim Petitioner was worked as stone cutter and his age is 35 years, as per Ex.P.8 and Ex.P.9/discharge summaries and hence, 40% to be added towards future prospects. Therefore, the disability and loss of earning power is re-assessed as follows:

$$[(8000 + 40\% \text{ of } 8000) \times 12 \times 16 \times 50\% = \text{Rs.}10,75,200/-]$$



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The Tribunal has awarded a sum of Rs.1,000/- towards damages to clothes, the same is confirmed. The Tribunal has awarded a sum of Rs.1,00,000/- towards pain and sufferings, the same is hereby reduced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards extra nourishment, the same is enhanced to Rs.20,000/- Apart from this a sum of Rs.20,000/- is awarded to the claim Petitioner towards loss of amenities and a sum of Rs.20,000/- is awarded towards attender charges.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earnings (8000x12month)	Rs. 96,000/-
2	Transportation to hospital	Rs. 20,000/-
3	Extra nourishment	Rs. 20,000/-
4	Attender charges	Rs. 20,000/-
5	Medical expenses	Rs. 3,70,000/-
6	Permanent disability & loss of earning power	Rs.10,75,200/-
7	Damages to clothes	Rs. 1,000/-
8	Pain and sufferings	Rs. 50,000/-
9	Loss of amenities	Rs. 20,000/-
	Total	Rs.16,72,200/-

The Tribunal has awarded 7.5% interest. The same is also hereby confirmed.



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25.In total, the claim Petitioner is entitled to a sum of Rs.16,72,200/-

(Rupees sixteen lakh seventy two thousand and two hundred only).

26.In fine,

(i) **CMA.No.2339 of 2021** filed by the Insurance Company is *allowed* and United Insurance Company-appellant is hereby exonerated from any liability. **CMA.No.2357 of 2021** filed by the injured for enhancement of compensation stands *partly allowed* and the compensation enhanced from **Rs.12,69,000/- to Rs.16,72,200 /-** to the extent indicated above, with 7.5% interest per annum. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii)The claim petitioner can proceed against the owner of the vehicle- Mani namely second respondent in C.M.A.No.2357 of 2021 for realization of the amount.

(iii) The owner of the vehicle is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) on such deposit being made, the claim Petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.



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(v) the claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

30.10.2024

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Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

To

1. The Special District Judge
Motor Accident Claims Tribunal
Special District Judge Court
Erode.

2. The Section Officer,
V.R.Section, High Court,
Madras.



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Judgment made in
C.M.A.No.2339 & 2357 of 2021 and
C.M.P.No.13129 of 2021

Dated:30.10.2024