

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CMA.Nos.2697 of 2004, 2943 of 2011 and 2928 of 2007
and
MP.Nos.15685 of 2004 and M.P.No.3 of 2007

The New India Assurance Co. Ltd.,
66 C, North Car Street,
Tiruchengode,
Namakkal District
637 211

...Appellant in all three CMAs/
3rd respondent in MCOP.172/2002

Vs.

P.Palaniswamy

...1st Respondent/petitioner
CMA.Nos.2697 of 2004

2.Sengodan

3.S.Ramaswamy

4.P.Ramesh

5.P.Raja

6.The United India Insurance
Company Ltd., represented
by its Branch Manager,
Door No.78, Kamaraj Salai
Cauvery Nagar,
Kulithalai-639 104.

... Respondents 2 to 6
CMA.Nos.2697 of 2004, 2943 of
2011 and 2928 of 2007.
(Respondents 1, 2 , 4 to 6)

Murugaraj @ Sundaram

...1st Respondent/petitioner
CMA.Nos.2943 of 2011

Kaliappan

...1st Respondent/petitioner
CMA.Nos.2928 of 2004

CMA.No.2697 of 2004 and 2943 of 2011 :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against common Judgment and decree in M.C.O.P.No.172 and 137 of 2002 dated 03.03.2003, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court II, Gobichettipalayam.

CMA.No.2928 of 2007 :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against Judgment and decree in M.C.O.P.No.60 of 2003 dated 18.07.2003, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court II, Gobichettipalayam.

For Appellant : K.Padmanabhan
in all 3 C.M.As.

For R1 : Mr.MA.P.Thangavel
in all 3 C.M.As.

For R6 : Mr.T.Ravichandran
in C.M.A.No.2928/2007

For R6 : Ms.B.Surekha
in C.M.A.No.2697/2007

JUDGMENT

These appeals have been filed by the New India Assurance Company against the award dated 03.03.2003 and 18.07.2007 passed by the Motor Accident Claims Tribunal/learned Additional District Judge, Fast Track Court-II, Gobichettipalayam in M.C.O.P.Nos.172 of 2002, 137 of 2002 and 60 of 2003. The claim petitions were allowed in part and a sum of Rs. 1,92,065/- was awarded in M.C.O.P.No.172 of 2002, Rs.2,13,716/- in M.C.O.P.No.137 of 2002 and Rs.1,37,000/- in M.C.O.P.No.60 of 2003. The award amounts will carry 9% interest per annum.

2. On 20.09.2001, the claimants in all the three cases travelled in a bus bearing registration No.T.N-34/2535 at Gobichettipalayam to go to Sathyamangalam. The second respondent is the owner of the bus and it was insured with the appellant herein. While the bus was proceeding on the Sathyamangalm to Gobichettipalayam main road, from South to North near Royanpalayam, the bus collided with the lorry owned by the third respondent and insured with the sixth respondent.

3.The Tribunal after analysing the evidence came to the conclusion that both the drivers were negligent and held that the accident occurred due to the composite negligence of both the drivers of the said vehicles.

4.Before the Tribunal, the owners of the respective vehicles remained ex-parte.

5.Learned counsel for the appellant contended that the Tribunal erred in holding that the insured and insurer of both the vehicles are jointly and severally liable without determining the degree of negligence against each of the drivers of the vehicle and thus, apportioning the liability. He would contend that in a case of composite negligence of two vehicles, the Tribunal should determine the degree of negligence against each of the drivers and also the liability to be apportioned among the owners of the vehicles and their insurer accordingly.

6.The Hon'ble Supreme Court in APSTRC and another Vs.K.Hemalatha and others (2008(6) SCC 767) held as follows:

"Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong doers. In such a case, each wrong doer is jointly and severally liable to the injured for the payment of the entire damages and the injured person as the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately."

7.In the case at hand, both the lorry and the bus drivers were responsible for the accident. The Tribunal found the accident occurred only due to the composite negligence of both the drivers. There is no appeal as against this finding. In the light of the dictum laid down by the Hon'ble Supreme Court, both the drivers are the wrong doers. Therefore, they are jointly and severally liable to pay the compensation. This Court finds no infirmity or illegality in the order passed by the Tribunal. No other point was urged.

8.However, it is brought to the notice of this Court that the sixth respondent has deposited 50% of the award amount before the Tribunal. The appellant/New India Assurance Company pursuant to the order of this Court has deposited 25% of award

amount. The appellant is hereby directed to deposit the balance 25% of the award amount within six weeks from the date of receipt of copy of this order with proportionate interest. On such deposit being made, the first respondents/claimants are entitled to withdraw the entire award amount after giving credit to the amount already withdrawn by them, if any.

9. In the result, the Civil Miscellaneous Appeals are dismissed and the award passed by the learned Additional District Judge, Fast Track Court-II, Gobichettipalayam in M.C.O.P.Nos.172 of 2002, 137 of 2002 and 60 of 2003 are hereby confirmed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
Fast Track Court-II,
(The Motor Accident Claims Tribunal)
Gobichettipalayam.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.K.Padmanabhan, Advocate SR.No.10404

CMA.Nos.2697 of 2004, 2943 of 2011 and 2928 of 2007
and
MP.Nos.15685 of 2004 and M.P.No.3 of 2007

NM (CO)
GN (20/04/2017)