



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

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CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) Nos.1373 of 2015 and 683 of 2016

and

M.P. (MD) .No. 1 of 2015 &
W.M.P. (MD) .No.7141 of 2016

C.M.A. (MD) No.1373 of 2015

Najimoonisha

... Appellant/1st Respondent

Vs.

1.K.Arunkumar

...1st Respondent/Petitioner

2.National Insurance Company Limited,
Rep by its General Manager,
2A, 1st Floor, Thirumakulam,
North Street, Tallakulam,
Madurai.

3.The United India Insurance Company Limited,
Represented by its Manager,
Deva Illam Complex,
Kumaraiya Kovil Bus Stop, Main Road,
Ramanathapuram. ... Respondents 2 & 3/ Respondents 2 & 3

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.07.2015 passed in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Ramanathapuram.

For Appellant	: Mr.H.Lakshmi Sankar
For R-1	: Mr.G.Marimuthu
For R-2	: Mr.S.Srinivasa Raghavan
For R-3	: Mr.G.Prabhu Rajadurai

C.M.A. (MD) Nos.683 of 2016

The Manager,
The United India Insurance Company Limited,
Main Road, Kumaraiya Kovil Bus Stop,
Deva Illam Complex,
Ramanathapuram.

... Appellant/3rd respondent



Vs.

1.K.Arunkumar

...1st Respondent/Petitioner

2.S.Najimunnisha

...2nd Respondent/1st Respondent

3. The Manager,
National Insurance Company Ltd.,
2A, 1st Floor, Thirumakkulam,
North Street, Thallakulam, Madurai.

... 3rd Respondent/2nd respondent

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.07.2015 passed in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Ramanathapuram.

For Appellant	: Mr.G.Prabhu Rajadurai
For R-1	: G.Marimuthu
For R-2	: Mr.H.Lakshmi Sankar
For R-3	: Mr.S.Srinivasa Raghavan

COMMON JUDGMENT

Heard the learned counsel on either side.

2.The award dated 22.07.2015 made in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Ramanathapuram is challenged by both United India Insurance Company Limited as well as owner of the vehicle said to have been responsible for the accident in question.

3.The claimant is one Arunkumar. He was riding a two wheeler bearing Registration No. TN 65-B-5989 which was insured with United India Insurance Company. The case of the claimant is that one TATA ACE van belonging to one Najimoonisha dashed against the said two wheeler on 07.07.2008 at about 05.30 P.M. In the ensuing accident the claimant suffered injuries on his leg. The Tribunal held that since the insurance policy covering the said TATA ACE van came into force only on 08.07.2008, the National Insurance Company Limited could not be made liable and was accordingly exonerated. However, though liability was primarily fastened on the vehicle owner of the TATA ACE van, United India Insurance Company which was the insurer for the two wheeler was directed to satisfy the award and thereafter to recover the same from the vehicle owner. Aggrieved by the said award both United India Insurance Company as well as the vehicle owner had preferred independent appeals.

<https://hcservices.ecourts.gov.in/hcservices/>

4. This Court is unable to understand as to how the United India Insurance Company could be fastened with the liability to



satisfy the award in the first instance. The question of pay and recovery principle cannot be applied.

5. The learned counsel appearing for the appellant insurance company in C.M.A.(MD).No.683 of 2016, further contended that the question of owner claiming compensation from his own insurer cannot arise. Therefore, on this ground also the award dated 22.07.2015 passed in M.C.O.P.No.12 of 2015 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Ramanathapuram has to be set aside. C.M.A.(MD).No.683 of 2016 is allowed and the appellant/Insurance company stands exonerated.

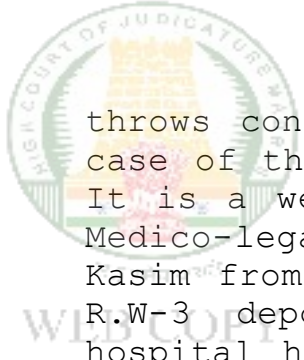
6. The next question to be gone into is whether the vehicle owner can be made liable. In the present case, the vehicle owner had filed a detailed counter contending that the TATA ACE was not even involved in the accident in question.

7. The learned counsel appearing for the claimant would contend that the injured Arunkumar deposed as P.W.1. In this case, FIR was registered against Veerapandi said to have driven the offending vehicle and final report was also filed against him. One Raja Gopal is the Investigating Officer. He was examined as R.W-2.

8. According to the learned counsel appearing for the claimant, the testimony of the injured witness coupled with the evidence of the Investigating Officer is more than sufficient to sustain the findings of the Tribunal.

9. The learned counsel appearing for the appellant in C.M.A.(MD).No.1373 of 2015 contended that the Tribunal did not take note of several relevant aspects. He contended that the findings arrived by the Tribunal are perverse.

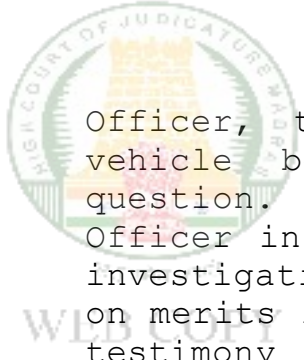
10. The accident in question took place on 07.07.2008 at about 05.30.P.M. It is admitted that the claimant was aged about 30 years old. His occupation is described as Insurance Service Representative in Bajaj Allianz Life Insurance Company Limited, Ramanathapuram. It is also admitted that he is the son of a retired police officer. The claimant states that he was admitted in Pioneer Hospital, Ramanathapuram after the occurrence of the accident and thereafter sent to Devadoos Multi-speciality Hospital at Madurai after initial treatment at Ramanathapuram. FIR was registered on 08.07.2008 at about 09.30 P.M by R.W-2, Raja Gopal. In the said First Information Report, the Registration Number of TATA ACE vehicle is given. All the relevant details were furnished only by the injured claimant. If really the claimant knew all the relevant information he could have clearly named the TATA ACE vehicle in question on 07.07.2008 itself. The FIR (Ex.P-1) came to be registered full 28.00 hours later. This



throws considerable doubt on the veracity of the complaint. The case of the claimant is that he was admitted in Pioneer Hospital. It is a well known institution in Ramanathapuram. It is having Medico-legal case register. In the present case, Dr.Mohammed Kasim from the Pioneer Hospital was examined as R.W-3. The said R.W-3 deposed that when claimant Arunkumar was admitted in hospital he was fully conscious. He also deposed that Arunkumar did not inform him that he suffered injuries as a result of the accident. Therefore, no entries were made in the Medico-legal case register. Of course in cross examination, an answer was elicited to the effect that the claimant had informed that he suffered injuries in road accident.

11. The driver of the offending vehicle is said to be one Veerapandi. He was also examined as R.W-1. He was prosecuted before the criminal Court. He was acquitted by the Criminal Court by judgment dated 15.05.2010 in S.T.C.No.114 of 2009 on the file of the Judicial Magistrate.II, Ramanathapuram. The said judgment was marked as Ex.R-1. The Tribunal has casually brushed aside the said judgment. It is true that the findings rendered by the criminal court are not binding on the Claims Tribunal. The Claims Tribunal will have to independently come to its own inferences with regard to the manner of accident and corresponding fastening of liability. But in the present case, the Criminal Court had gone into the evidence available before it at considerable depth and had given a specific finding that considerable doubt is cast on the police version. The acquittal rendered in favour of the driver was not for technical reasons. It was a judgment on merits.

12. The vehicle owner issued legal notice (Ex.R-8). In the said legal notice a stand was taken that the appellant vehicle was falsely implicated. The said legal notice was returned as refused. The returned cover was marked as Ex.R-4. The Investigating Officer Raja Gopal was examined as R.W-2. This Court went through his deposition in full. The said Raja Gopal was confronted with the various discrepancies appearing in this case. In particular, the date when the offending vehicle was secured was sought to be elicited. One Amal Raj, a Police Constable was said to have reached the accident spot in half an hour. He said to have sent both the damaged two wheeler as well as TATA ACE to the police station. But R.W-2 Raja Gopal claimed that the vehicle was secured only on 09.07.2008. Before the Criminal Court, he claimed that he secured the vehicle only after two weeks. When he was confronted with regard to this discrepancy, the said Raja Gopal frankly stated that the statement of Amal Raj was true and that his statement was false. When the appellant herein had been taking a consistent stand from very beginning that the appellant vehicle has been falsely implicated, the entire onus lies only on the claimant. In the present case, except *ipse dixit* of the claimant and the testimony of the Investigating



Officer, there is no other material to connect the TATA ACE vehicle belonging to the appellant with the occurrence in question. The evidence of R.W-2 Raja Gopal, the Investigating Officer in this case cannot carry any weightage. That apart, the investigation conducted by him ended in the judgment of acquittal on merits in favour of R.W-1. This leaves the Court only with the testimony of the injured claimant. As already pointed out that the injured claimant was not only the son of a retired police officer but also an Insurance Service Representative. FIR was lodged at his instance. Even according to the Doctor R.W-3, he was fully conscious. The injury was only on the leg. That information containing the details of the offending vehicle were not brought on record at the earliest point of time throws considerable doubt on the case of the claimant. The burden lay only on the claimant. That burden was not discharged. The Tribunal erred in fastening the liability on the appellant. The award is set aside. C.M.A(MD).No.1373 of 2015 is allowed.

13. Accordingly, both the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Ramanathapuram.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.G.Prabhu Rajadurai , Advocate in SR No. 88904
+ 1 cc TO Mr.S.Srinivasa Raghavan , Advocate in SR No. 89029
+ 1 cc TO Mr.H.Lakshmi Shankar , Advocate in SR No. 88594
+ 1 cc TO M/S.G.M.Law Office , Advocate in SR No. 88543

kmi

AE/JC/SAR2/09.05.2018/5P/8C

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