



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.464 of 2015

and

MP (MD) No.2 of 2015

M/s.National Insurance Co., Ltd,
through its Branch Manager,
74 A, Paramathi Road,
Namakkal.

... Appellant/5th Respondent

Vs.

1.P.Annathai
2.D.Deepa
3.D.Aji Singh
4.D.Jeya Parakash @ Ani Singh
5.P.Rethinam

... Respondents 1 to 4/ Petitioners

6.The Managing Director,
TNSTC, Pallavan House,
Pallavan salai,
Chennai - 600 002.

7.M.Sekar
8.G.Nagarajan

... Respondents 5 to 8/ Respondents 1 to 4

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree order dated 27.03.2013 made in MCOP.No.97 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai.

For Appellant : Mrs.P.Malini

For Respondents : Mr.R.Ramachandran for R1 to R4
Mr.P.Prabhakaran for R6
No appearance for R8

JUDGMENT

Heard the learned counsel on either side.

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2.The insurance company has filed this appeal questioning the



impugned award with regard to the fastening of 50% liability on them.

3.The contention of the learned counsel appearing for the appellant is that the accident in question occurred on 08.11.1998. The bus belonging to the sixth respondent corporation had dashed against a parked lorry insured with the appellant insurance company. The claim petition was filed before the Tribunal at Padmanabhapuram in MCOP.No.18 of 2001. Award was passed in the said claim petition on 29.11.2005. The appellant herein was exonerated and the entire negligence was fastened on the bus belonging to the sixth respondent corporation. The said award has become final. It was not challenged. Thereafter, the present MCOP.No.97 of 2009 came to be filed on the file of Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai.

4.Even though the earlier award was marked as Ex.R1, the Tribunal chose to apportion the negligence equally between the lorry driver and the bus driver. As a result, 50% liability was fastened on the appellant insurance company. Questioning the same, this appeal has been filed.

5.The contention of the learned counsel appearing for the appellant insurance company has to be necessarily accepted. When out of one accident, two claim petitions were filed and in one claim petition entire negligence has been fastened on the sixth respondent, the question of taking a different view with regard to negligence and liability in the subsequently filed claim petition will not arise.

6.The award dated 27.03.2013 made in MCOP.No.97 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Kuzhithurai is modified. The entire liability is fixed only on the sixth respondent herein to satisfy the impugned award. The appellant insurance company is exonerated.

7.The sixth respondent transport corporation is directed to deposit the entire compensation amount as awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization with costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any.

8.On such deposit, the claimants are entitled to withdraw the same as apportioned by the Tribunal by filing proper application, less the amount already withdrawn by them, if any. The appellant insurance company is permitted to withdraw the balance amount, if already been deposited.



10. This Civil Miscellaneous Appeal is allowed. No costs.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

The Motor Accidents Claims Tribunal, Sub Court,
Kuzhithurai.

Copy to:

The Record Keeper,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr.P.Prabhakaran , Advocate in SR No. 88363
+ 1 cc TO Mrs.P.Malini , Advocate in SR No. 88060

skm

AE/SKN RSK/SAR1/19.12.2017/3P/5C

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