



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 16.10.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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C.M.A. (MD) .Nos.929 to 931 of 2018

and

C.M.P. (MD) .Nos.3470 to 3472, 10132 to 10134, 6493, 6495 & 6502 of 2019

M/s. United India Insurance Company Limited,
Branch I,
114/120, Super Bazar,
Trichy & District.

... Appellant/2nd Respondent
in all C.M.As.

-Vs-

1.Mr.Selvaraj	... 1 st Respondent/Claimant in CMA (MD) .No.929/2018
2.Mr.B.Khimraj	... 2 nd Respondent/1 st Respondent in CMA (MD) No.929/2018
1.Minor Aravind (Minor rep. By his father Selvaraj)	... 1 st Respondent/Claimant in CMA (MD) No.930/2018
2.Mr.B.Khimraj	... 2 nd Respondent/1 st Respondent in CMA (MD) No.930/2018
1.Mrs.Shanthi	... 1 st Respondent/Claimant in CMA (MD) .No.931/2018
2.Mr.B.Khimraj (Notice to 2 nd Respondent given up in all CMA Cases)	... 2 nd Respondent/2 nd Respondent in CMA (MD) No.931/2018

PRAYER in C.M.A. (MD) No.929 of 2018 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 22.03.2017 made in M.C.O.P.No.5598 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tiruchirapalli.

PRAYER in C.M.A. (MD) No.930 of 2018 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 22.03.2017 made in M.C.O.P.No.121 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub

Court), Tiruchirapalli.

PRAYER in C.M.A. (MD) No.931 of 2018 : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 22.03.2017 made in M.C.O.P.No.124 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tiruchirapalli.

For Appellant : Mr.B.Rajesh Saravanan

For R1 : Mr.N.Sudhagar Nagaraj

J U D G M E N T

These Civil Miscellaneous Appeals have been filed challenging the common order passed by the Motor Accident Claims Tribunal (Special Sub Court), Tiruchirapalli in M.C.O.P.Nos.5598 of 2013, 121 and 124 of 2014, dated 22.03.2017.

2. The present Civil Miscellaneous Appeals are filed only on the aspect of the liability fixed by the Tribunal against the second respondent / owner of the vehicle.

3. According to the appellant / Insurance Company, the accident had occurred due to the rash and negligent driving of the vehicle bearing Registration No.TN 57 H 2677. Therefore, the learned counsel for the appellant contended that the owner of the vehicle insured with the appellant / Insurance Company is no way responsible for the accident. Further, he contended that a F.I.R. has been registered against the driver of the vehicle bearing Registration No.TN 57 H 2677 and no insurance coverage at the time of accident. Further, the first respondent / claimant has filed the claim petitions as if the accident had occurred due to the rash and negligent driving on the part of the second respondent's driver, who drove the vehicle bearing Registration No.TN 57 H 2677. Therefore, he contended that the owner of the vehicle bearing Registration No.TN 57 H 2677 is no way responsible for the accident. Without considering all these aspects, the Tribunal has wrongly fixed the liability holding that the accident occurred due to the rash and negligent driving of the second respondent / owner of the vehicle. Challenging the said order, the present appeals have been filed by the Insurance Company.

4. On the other hand, the learned counsel for the first respondent contended that the accident had occurred due to the negligence on the part of the driver of the vehicle bearing Registration No.TN 57 H 2677. In this regard, two witnesses have been examined i.e., P.Ws.1 and 2 and on behalf of the Insurance Company, no eye witness was examined and in such circumstances, the Motor Accident Claims Tribunal after perusing the records and after hearing the arguments of both sides, come to the conclusion that the



accident had occurred due to the negligent driving on the part of the second respondent's driver.

5. Heard the learned counsel for the appellant / Insurance Company, the learned counsel for the first respondent/claimant and perused the materials available on record.

6. The Tribunal, after examining the eye witnesses i.e., P.Ws.1 and 2, had come to the conclusion that the accident occurred due to rash and negligent driving on the part of the second respondent's driver, who drove the vehicle bearing Registration No.TN 57 H 2677 and accordingly fixed the liability. Though the appellant herein filed a counter claiming that the negligence is only on the part of the driver of the vehicle bearing Registration No.TN 57 H 2677, they have not been taken any steps to examine any of the eye witnesses and they have not filed any document in order to prove the case. In the absence of any evidence, based on the eye witnesses i.e., P.Ws.1 and 2, the Tribunal has rightly come to the conclusion holding that the accident occurred due to rash and negligent driving on the part of the second respondent's driver and accordingly fixed the liability and therefore this Court do not find any infirmity in the order passed by the Court below. Without examining any eye witnesses and prove the averments, there is no *locus standi* for the appellant to prefer this appeal claiming the same averments what they have made in the counter filed before the Tribunal. Hence, there is no merit in the present appeals and the same are liable to be dismissed. Accordingly, the Civil Miscellaneous Appeals are dismissed and the award passed by the Motor Accident Claims Tribunal (Special Sub Court), Tiruchirapalli in M.C.O.P.Nos.5598 of 2013, 121 and 124 of 2014, dated 22.03.2017 is confirmed.

7. In view of the dismissal of these appeals, the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, to the credit of the claim petitions, within a period of four weeks from the date of receipt of a copy of this order, if not deposited already. On such deposit, the Tribunal is directed to transfer the said amount directly to the Personal Savings Account Number of the claimants by way of RTGS/NEFT system, after getting their Account Details, within a period of three weeks thereafter. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To
The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruchirapalli.

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+1 CC to M/s.B.RAJESH SARAIVANAN, Advocate (SR-92570[F] dated 17/10/2019)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-92634[F] dated 17/10/2019)

C.M.A. (MD) .Nos.929 to 931 of 2018
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