



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

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CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.1597 and 1598 of 2016
and
C.M.P.Nos.12036 and 12037 of 2016

M/s.The Reliance General Insurance Company Limited,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalaur Main Road,
Swarnapuri, Salem-4.

...Appellant/3rd Respondent in both appeals

Vs

1.Vasanth

...1st Respondent/Claimant

2.S.Murugesan

3.C.Rathinam

...2nd and 3rd Respondents/1st and 2nd
Respondent in CMA 1597/2016/

1.Kulandai

2.Nallathambi

3.Arumugam

4.Pappathi

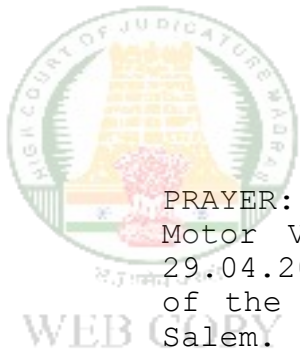
5.Dhanam

6.Chinnathambi

7.S.Murugesan

8.C.Rathinam

...Respondents in CMA 1598/2016



PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 29.04.2015 made in M.C.O.P.Nos.1986 and 2078 of 2010 on the file of the Motor Accidents Claims Tribunal, Special District Court, Salem.

For Appellant : Ms.Harini
for Mr.M.B.Gopalan

For Respondents : No Appearance

C O M M O N J U D G M E N T

(These cases have been heard through Video Conferencing)

Heard the learned counsel for the appellant. Even after substitute service by way of paper publication after the conventional mode of service did not fructify, there is no representation for the respondents.

2. These two appeals arising out of a short point that in a motor accident occurred on 03.06.2010, when a tempo van bearing Registration No.TN 49 A 5371 dashed against Auto bearing Registration TN 32 T 8409 passenger in Auto sustained injury. A case was registered against the tempo van driver. The offending vehicle viz., tempo van was not insured. Hence, the injured passenger Smt.Vasantha and the legal representatives of the deceased passenger Unnamalai @ Pappal had filed individual claim petitions before the Motor Accident Claims Tribunal in M.C.O.P.No.19786 of 2010 and M.C.O.P.No.2078 of 2010 on the file of the MACT Salem, claiming compensation. The claim petition filed by Smt.Vasantha for the injuries sustained by her in the accident seeking compensation of Rs.5,00,000/- and the claim petition filed by the legal representatives of the deceased Unnamalai @ Pappal seeking compensation of Rs.10,00,000/- were taken up together for trial by the Tribunal, since the cause of action was one and the same.

3.The claim petitions were filed against Murugesan, the owner of the tempo van, Rathinam, owner of the Auto and Reliance General Insurance Company, the insurer of the Auto. The Insurance Company took a specific defense that when the tortfeasor is the Auto Driver, the insurer of the tempo van is not liable to indemnify the owner of the Auto, since there is no privity of contract between the owner of the Auto, the offending



vehicle and the Insurance Company. However, the Tribunal has allowed the claim petitions awarding Rs.92,070/- for Smt.Vasanth, the claimant in M.C.O.P.No.1986 of 2010 and sum of Rs.2,65,000/- to the L.Rs. Of the deceased Unnamalai @ Pappal in M.C.O.P.No.2078 of 2010.

4. In these appeals, the appellant has challenged the award of the Tribunal on the ground of liability with specific plea that when it is admitted by the claimants themselves that the driver of the van was entirely responsible for the accident, it is the owner of the offending vehicle viz., tempo van, vicariously liable to compensate to the claimant and not the Insurance Company of the Auto, which is not cause for the accident.

5. From the evidence, this Court finds that Ex.P1 FIR dated 04.06.2010 has been registered against one Venkatachalam, the driver of the tempo van. In the claim petitions also, it is specifically pleaded that the Auto was driving by the driver carefully but the tempo coming from the opposite direction rash and negligently hit against the Auto, while FIR Ex.P1 and final report Ex.R1 in Crime No.600/2010 on the file of the Valapadi Police Station clearly indicates that the accident was caused by the tempo van driver. The liability to compensate is on the owner of the tempo van Murugesan, arrayed as the first respondent in the claim petitions. The Tribunal also on considering the evidence, has held that the accident is caused only due to the negligence of the tempo driver, who is Venkatachalam. Having held so, it has erroneously identified while answering the second issue that Venkatachalam is the driver of the share auto, which is factually incorrect. Due to the factual error, the Tribunal has held that the appellant, who has insured the Auto, to indemnify the owner of the Auto.

6. Reading of the impugned Tribunal Award clearly indicates that the Tribunal has rightly held that the accident has occurred due to the rash and negligence of the tempo van driver Venkatachalam, while answering the issue No.1. Due to inadvertence, while answering issue No.2, had erroneously identified Venkatachalam as driver of Auto and fastened the liability on the Insurance Company. The patent illegality is bound to be rectified. Hence, the Civil Miscellaneous Appeals are allowed. The award of the Tribunal is set aside, insofar as the liability fixed on the appellant.



The owner of the Tempo Van, which has caused the accident is liable to pay compensation amount. Accordingly, the claimants in these two M.C.O.Ps are directed to proceed against Murugesan, the owner of the tempo van for recovery of the award amount. Accordingly, both the Civil Miscellaneous Appeals are disposed. No order as to costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vri

To

The Special District Judge,
Motor Accidents Claims Tribunal,
Special District Court, Salem.

CMA Nos.1597 and 1598 of 2016

PP(CO)
GMY(27/08/2021)