



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.11.2020

Pronounced on: 24.11.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.630 of 2015

and

M.P.No.1 of 2015

M/s Royal Sundaram Alliance Insurance Co.Ltd.,
No.6, Lattipet, Bridge Road,
Chennai 600 020.

.. Appellant/2nd Respondent

/versus/

1.C.Diwakar
S/o R.Chinnappan,
No.107, 4th Corss,
KPN Extension,
Bangalore-2.
Now having office at
Prop.M/s Mayura Logistics Pvt.Ltd.,
Transport Contractors,
No.5/9-4, First Floor,
Navanidhi Towers,
Junction Main Road, Salem-4.

2.Mayura Logistics Pvt. Ltd., Salem,
By its Managing Director C.Diwakar,
Having Office at No.5/9-4, First Floor,
Navanidhi Towers,
Junction Main Road,
Salem-4.

.. Respondents1& 2/ Petitioners

3.S.Sathya Moorthy,
S/o Subramanian,
No.4, Agathi Krishnappa Chetty Street,
Vellur.

4.M/s New India Assurance Co.Ltd.,
D.O., Srivari Shopping Mall, II Floor,
Near ARRS Multi Complex, Salem.

.. Respondents3&4/
Respondents 1&3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.523 of 2009 dated 20.06.2014 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Salem.



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For Appellant : M/s Harini for
M/s M.B.Gopalan Associates

For Respondents: Mr.K.Vinod for R4
R1 and R3- No appearance
R2-not ready notice

JUDGMENT

(The case has been heard through video conference)

The appeal under Section 173 of the Motor Vehicles Act, 1988, is filed by the Insurance Company, being aggrieved by the award passed in M.C.O.P.No. 523/2009 by the Motor Accident Claims Tribunal, II Additional District Court, Salem.

2.The first respondent herein is the owner of the tanker lorry bearing registration No. KA-01-B-3144. On 20/07/2008, goods of caustic soda lye from Chennai to Harihar at Karnataka State was transported in the said tanker lorry. Enroute during transport, the driver of the tanker lorry parked the vehicle on the extreme left of the service road near Sumaithangi Village (within Kaveripakkam Police Station limit) on the Chennai - Vellore Main Road. Then, a lorry bearing registration No. TN 23 - AD - 5527 hit behind the parked tanker lorry and caused damage to the rear of the tanker lorry. In the said accident, the main valve of the caustic soda lye broke and entire load of the caustic soda lye leaked out. The goods worth Rs.1,44,145/- got lost in the accident.

3.Claiming that the owner of the goods (caustic soda lye) M/s Karneet Enterprises (India) Pvt. Ltd. had debited the goods value in the account of the first respondent, a petition filed against the owner of the offending lorry, its insurer and the insurer of the tanker lorry seeking compensation of Rs.1,44,145/- towards loss of goods, Rs.30,000/- for loss of earning and Rs.10,000/- for mental agony totally Rs.1,84,145/- jointly and severally payable by them.

4.The insurance company resisted the claim on the ground the claim petition deserve to be dismissed for want of territorial jurisdiction, the accident occurred due to the negligence on the part of the tanker driver and the claim petition for the goods damaged ought to be preferred only by the owner of the goods and not by the owner of the carrier.

5.The Tribunal held that the Motor Vehicles Act, 1988 being a beneficial legislation, under Section 165 of the Motor Vehicles Act, 1988, the insurance company is liable to compensate the damage to the property of the 3rd party and for loss of income arose due to the accident. Directed the insurer of the offending lorry to pay a sum of Rs.1,54,415/- as compensation with interest at the rate of 7.5% from the date of



petition till the date of realisation.

6. In the appeal filed by the second respondent in the claim petition, it is contended that the Tribunal failed to consider Section 166(1)(b) of the Motor Vehicles Act, which specifically says that claim petition for loss of goods can be filed only by the owner of the goods and not by the carrier. Unless subrogation pleaded with proof of payment to the owner of the goods by the carrier, the carrier cannot stake claim for the alleged loss of goods. In the absence of proof for the value of the goods lost and in the absence of proof that the value of the goods already paid to the owner of the goods by the carrier, the Tribunal ought not to have entertained the claim petition and awarded compensation.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 4th respondent. Records perused.

8. The claimant is the carrier. The claim petition is primarily filed for the compensation to the goods lost during transit. Admittedly, the owner of the goods is M/s Karneet Enterprises (India) Pvt. Ltd. at Bangalore. The claimant had relied upon Ex.P-7-debit note to show that the value of the goods had been debited in his account by the goods owner. The insurer has taken a specific plea that the debit note is not the proof for payment. The insurer has relied upon Ex.R-1-goods consignment note to prove, the petitioner/respondent herein is not the owner of the goods.

9. Section 166(1)(b) of the Motor Vehicles Act, specifically says, an application for compensation arising out of an accident of the nature specified in Sub Section (1) of section 165 may be made:-

- a) ...
- b) by the owner of the property; or
- c) ...
- d) ..

10. The tribunal has failed to assign any reason how the claim petition by the carrier for loss of goods is maintainable contrary to Section 166(1)(b) of the Motor Vehicles Act, when admittedly the claimant is not the owner of the goods. The Tribunal after referring Section 165(1) of the Motor Vehicles Act had held that the goods in the transit entrusted to the carrier has to be considered as goods of the third party. Having held so, it ought to have dismissed the claim for the loss of goods for want of locus-standi, since the owner of the goods alone is competent to file claim petition under Section 166(1)(b) of the Motor Vehicles Act.

11. There is no discussion about the debit note Ex.P-7 and



the Goods consignment note Ex.R-1, which are essential to decide whether the claim petition is maintainable and if yes, whether the value of goods lost in transit as claimed is proved.

12.In view of this Court, the impugned award of the Tribunal is not based on the evidence and law canvassed before it. Hence, it is liable to be set aside. The matter is remanded back to the Tribunal for fresh consideration both on facts and law, with direction to dispose the matter at the earliest.

13.In the result, this Civil Miscellaneous Appeal is allowed. The award of the Tribunal is set aside. This case is remanded to the Tribunal for fresh consideration. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:-
The Motor Accident Claims Tribunal,
II Additional District Court, Salem.

+1 cc to Mr.K.Vinod, Advocate Sr.NO.37710
+1 cc to Mr.S.P.Yuvaraj, Advocate Sr.NO. 37814

C.M.A.No.630 of 2015
and
M.P.No.1 of 2015

(CO)
A.SK(29.10.2021)