



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED : 11.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A. (MD).No.113 of 2010

MP (MD) No.1 of 2010

WEB COPY

The Branch Manager,
The New India Assurance Co.Ltd.,
7778, South Car Street,
Sivakasi,
Virudhunagar District. : Appellant /2nd Respondent

Vs.

1.M.Ravindran : 1st Respondent/Petitioner

2.P.Venkatasamy : 2nd Respondent/1st Respondent
(Exparte before the Tribunal dispensed with)

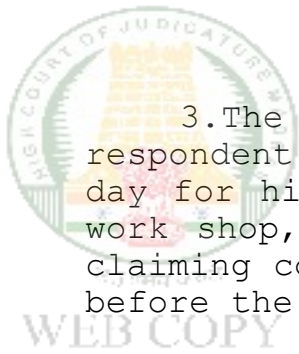
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and executable order dated 30.09.2009 passed in M.C.O.P.No.60 of 2005 on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For Appellant : Mr.K.Elangovan
For R1 : Mr.G.Venugopal
For R2 : Exparte

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and executable order dated 30.09.2009 passed in M.C.O.P.No.60 of 2005 on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

2.The case of the claimants before the Tribunal is that the on 19.01.1999, at about 06.10 p.m., in the evening, the Ambassador Car bearing Registration No.TN-67-B-1863, belongs to the petitioner was driven by its driver, on Srivilliputtur to Sivakasi Road from West - East direction. In the Car, M.Sivagurunathan, K.Ramakrishnan and P.Selvaraj were the occupants. Near the place of occurrence, the first respondent's vehicle driver was driving lorry bearing Registration No.TN-67-Y-4248 in a rash and negligent manner and dashed against the Ambassador Car behind. As a result of which, the Car was damaged and he has spent a sum of Rs.1,49,900/-. The Car was insured with the National Insurance Company and the Company has paid a sum of Rs.55,316/- towards the part of the damage. So, the balance amount is Rs.94,584/-. That has to be paid by the respondents.



3.The first respondent's vehicle was insured with the second respondent. The petitioner was also earning a sum of Rs.600/- per day for hiring the vehicle. since the vehicle was stationed in the work shop, there was a Income loss, estimated at Rs.18,000/-. So, claiming compensation of Rs.1,52,813/-, the claim petition was filed before the Tribunal.

4.The second respondent contended that the accident did not take place due to the rash and negligent driving on the part of the first respondent's vehicle driver. Only the petitioner, dashed against the bus, which was coming in the opposite direction, owned by the Transport Corporation and later against the Lorry. So, the compensation claimed is not liable to be paid by the Insurance Company. The amount was fully paid by the Insurance Company of the petitioner.

5.With this pleadings on the side of the petitioner, two witnesses were examined and ten documents marked. On the side of the respondent one witness was examined and three documents marked.

6.At the time of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and regarding the compensation for the damages, the Tribunal has awarded a sum of Rs.84,000/- at the rate of 7.5% interest and cost.

7.Challenging the same, the appeal has been preferred by the appellant/2nd respondent mainly on the ground that there is no liability on the part of the appellant to pay the amount, since the damages caused to the vehicle had been paid by the Insurance Company of the petitioner and to prove the same, the documents were produced. Ex.P.9 is only the xerox copy is not admissible in evidence and no procedure was also followed before admitting this document as per 67 of Indian Evidence Act. On the contra, the respondent would submit that R.W.1, who is the Officer of the appellant Insurance Company himself admitted the damages. So the appellant is liable.

8.Subsequent to the occurrence, First Information Report was registered against the first respondent's vehicle driver on the complaint by the driver of the Tamilnadu Transport Corporation stating that near the place of occurrence, the Ambassador Car bearing Registration No.TN-67-B-1863 was waiting for crossing the bridge. At that time, the first respondent's vehicle driver drove the vehicle in a rash and negligent manner and dashed against the bus as well as the Ambassador Car. The reading of the First Information Report clearly shows that only the first respondent's vehicle driver was negligent in his driving. The petitioner's vehicle was stopped and waiting for crossing the bridge. Only at that time, the first respondent's vehicle driver, dashed against the



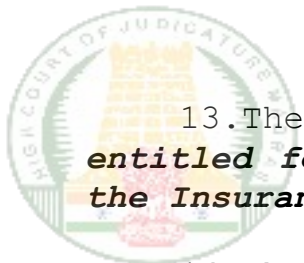
petitioner. There is no evidence, on the side of the respondent to show that only the petitioner after hitting the Corporation vehicle dashed against the Lorry, which was coming in the opposite direction. So, the manner of the accident clearly shows that only the first respondent's vehicle driver was responsible for the accident. So, the conclusion reached by the Tribunal requires no interference.

9.Regarding the compensation, as mentioned earlier, the main ground of the appellant/2nd respondent is that the Ex.P.9 is the certified true copy of the estimate of bills for repairing damages caused to the petitioner's vehicle and the same was under taken by one Sri Ambal Automobiles, Virudhunagar, Jeremiah Seat Covers, Virudhunagar, Kani Motors, Madurai, Annai Raja Meenakshi Engineering Works, Virudhunagar, DKM Tinker Works, Virudhunagar, Ravi Auto Electrical Works, Virudhunagar, Sri Balamaniikandan Engineering Works, Virudhunagar, Nachiappa Agency, Madurai and Spare Parts Bills issued by Alagendran Automobiles, Madurai etc.,

10.Ex.P.9 was marked through P.W.2, who is the Senior Administrative Assistant attached to the National Insurance Company, Sivagangai, who is the insurer of the first respondent's vehicle. He would say that original of Ex.P.9 was presented to their office along with claim form by the claimant and they have appointed the appraiser, who is the surveyor. On the basis of the surveyor's report, they have paid a sum of Rs.55,316/- to the claimant.

11.According to the 1st respondent/petitioner, the balance amount must be paid by the insurer and insured of the Lorry, which caused the accident. At the time of marking this document, it appears that, no objection was raised by the Insurance Company. More over, as mentioned earlier, it is a certified true copy of the original document, produced before the Insurance Company along with the claim form by the 1st respondent/petitioner. So, when he has admitted the same in his evidence 'without any objection' and that was proved that it is a true certified copy. So, the contention, on the part of the appellant that it is not admissible in evidence cannot be accepted.

12.The original was available with P.W.2's Office at the time of enquiry. No doubt, it is the procedural irregularity, committed by the Tribunal, at the time of marking of the documents. The non availability of the originals, might have been spoken by P.W.2, at the time of evidence. So, the lapse, on the part of P.W.2 of the 1st respondent's/petitioner's Insurance Company need not be given any importance at all. So, Ex.P.9 can be taken into account, because, only on that basis, the Insurance Company of the 1st respondent/petitioner, settled part of the amount. Therefore, the genuineness of the document cannot be questioned.



13.The only point now to be decided is **whether the claimant is entitled for the balance amount from the 2nd respondent herein and the Insurance Company.**

14.The surveyor was appointed by the appellant and he has made an estimation of damages as Rs.1,49,900/-. The Surveyor's Report was marked as Ex.P.7. R.W.1, who is the Appraiser of the appellant Insurance Company, stated that since both the vehicles suffered damages, they have to claim the damages only from their Insurance Company. But, when there is a combined liability, the claimant is entitled to get damages from the offending vehicle and its insurer. When part of the amount was settled by the insurer of the damaged vehicle, the remaining amount has to be paid only by the tort-feasor. Hence, the contention on the part of the appellant cannot be accepted that only the insurer of the claimant's vehicle is liable to pay the entire damages. Since, the genuineness of the document cannot be questioned, this Court find that the surveyor Report, which is based upon the personal investigation cannot be discarded. The total claim is Rs.1,49,900/- and settled amount was worked out at Rs.57,766/-. The balance amount is worked out at Rs.58,066/-. So, that amount must to be paid by the tort-feasor/2nd respondent and on his behalf the appellant herein. However, there is a small arithmetic mistake committed by the Tribunal. The total allowed claim was Rs.57,766/-. When this amount is deducted from the total claim of Rs.1,49,000/-, the balance amount is Rs.92,134/-. This arithmetic mistake is liable to be corrected by this Court.

15.According to the appellant, only Rs.35,000/- has to be paid by deducting Rs.57,766/- from Rs.97,600/-. According to the appellant, there is a arithmetic mistake and if at all, the appellant is liable to pay only Rs.35,000/-. But, this is not correct in view of the above discussion.

16.In the result, the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, passed in M.C.O.P.No.60 of 2005, dated 30.09.2009, is modified and the Civil Miscellaneous Appeal is dismissed. But, however, the damages is increased to Rs.92,134/-, the appellant is directed to deposit the entire award amount with 7.5% interest from the date of petition. On such deposit being made, the first respondent is permitted to withdraw the entire amount immediately. No costs. Consequently, the connected miscellaneous petition is closed.

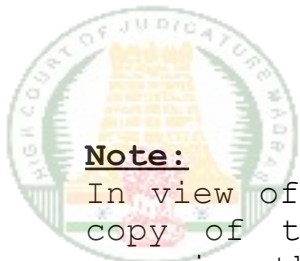
Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate,
Virudhunagar District, Srivilliputhur.

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

+1 CC to M/s.K.ELANGO VAN, Advocate (SR-1022[F] dated 19/01/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1015[F] dated 18/01/2021)

Judgment made in
C.M.A. (MD) .No.113 of 2010
11.01.2021

SMV (CO)

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