



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

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C.M.A(MD) No.1337 of 2010

and

M.P(MD)No.1 of 2010

The Branch office,
The New India Assurance Co., Ltd.,
Theni. .. Appellant/Respondent-2

vs.

1.Murugan @ Murugesan .. 1st Respondent/Petitioner

2.M/s.Thiruvalar Vadugapatti and
Sedapatti Telungu Chettiyar's Associations,
Vadugapatti Post,
Periyakulam. .. 2nd Respondent/Respondent-1

3.Tamilnadu State Transport Corporation,
(Madurai Division 4 Ltd.),
Dindigul. .. 3rd Respondent/Respondent-3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the decree and judgment, dated 23.04.2010 made in M.C.O.P.No.81/2005 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Karur.

For Appellant	: Mr.B.Vijay Karthikeyan
For R1	: Dismissed vide Court Order dated 10.04.2019
For R2	: No appearance
For R3	: Mr.M.Prakash

J U D G M E N T

This appeal challenges the award passed by the Motor Accident Claims Tribunal (Principal Sub-Court), Karur, in M.C.O.P.No.81 of 2005. Against the claim of Rs.5,00,000/-, the Tribunal has awarded Rs.3,35,800/- fixing 25% liability on the appellant.

2. This is a case of injury. It is the case of the claimant that on 12.06.2002 at 9.15 a.m., he was travelling in a bus belonging to the Transport Corporation from Kodaikanal-Poomparai, when the vehicle was driven carefully and slowly, the driver of the lorry came in a rash and negligent manner, hit against the bus. In the impact, he sustained injuries.



3. The defence of the appellant before the Tribunal was that the driver of the bus was responsible for the accident and the claim was excessive and exorbitant.

4. In order to prove the case, the claimant examined two witnesses and marked 9 documents and the appellant examined one Abraham Satheesh as R.W.1, but no documentary evidence was marked.

5. The claimant gave evidence in the line of the averments made in the claim petition and also produced Ex.P1-FIR to show that the Criminal Case was registered against the driver of the lorry. Ex.P4 and Ex.P5 are the sketch and final report. After analysing the evidence of P.W.1 and Ex.P1, Ex.P4 and Ex.P5, the Tribunal came to the conclusion that both the drivers of the lorry and the bus were responsible for the accident and fixed the negligence at 75% on the driver of the bus and 25% on the driver of the lorry.

6. Mr.B.Vijay Karthikeyan, learned counsel appearing for the appellant would submit that the Tribunal ought to have fixed the entire negligence on the driver of the bus.

7. Per Contra, Mr.M.Prakash, learned counsel appearing for the third respondent-Transport Corporation would argue that the Transport Corporation filed M.C.O.P.No.135 of 2005 against the owner as well as the insurer of the lorry for damages and the petition was also allowed by the Motor Accident Claims Tribunal (Fast Track Court), Dindigul. It is also submitted that in M.C.O.P.No.1110 of 2002 the learned Principal District Judge, Dindigul has fixed the entire liability on the driver of the lorry. Similarly, in M.C.O.P.No.2086/2002, IV Additional Sub-Court, Madurai fixed the entire liability on the driver of the lorry. The learned counsel appearing for the third respondent has drawn the attention of this Court to the findings of the Tribunals.

8. Though, it is contended by the learned counsel for the appellant that the documents now referred by the counsel for the Transport Corporation were not produced before the Tribunal, it is an admitted fact that in respect of the same accident, finding has been rendered against the owner as well as the insurer of the lorry. That apart, it is evident from the records that the Tribunal has given convincing reasons to fix liability on the driver of the lorry also.

9. In the light of the above, I find no merit in the appeal and hence, the Civil Miscellaneous Appeal is dismissed. The appellant and the third respondent are directed to deposit the entire award amount with accrued interest and costs as directed by the Tribunal, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to



withdraw the award amount by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accident Claims Tribunal
(Principal Sub Court), Karur.

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

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-15690[F] dated 09/04/2021)

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SMV(CO)
KB(26.05.2021) 3P 5C