

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	25.11.2021
DELIVERED ON	17.12.2021

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CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.1374 of 2013**

The New India Assurance Company Limited,
Rep. By its Branch Manager,
Nagercoil,
Agashteeswaram Taluk,
Kanyakumari District.

...Appellant/7th Respondent

Vs.

...1st Respondent/Petitioner

1.P.Paul Raj

2.S.Sundaresan

3.S.Sornam

4.C.Thomas

5.S.Justin Jose

6.L.G.Sherinlix

7.The United India Insurance Company Limited,
Rep. By its Branch Manager,
Nagercoil, Agastheeswaram Taluk,
Kanyakumari District.

8.The Oriental Insurance Company Limited,
Rep. By its Branch Manager,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

...R-2 to R-8/R-1 to R-6 & R-8

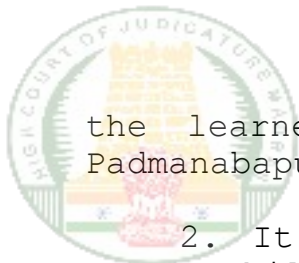
PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award and decree dated 09.11.2012 made in M.CO.P.No.65 of 2007 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Padmanabapuram.

For Appellant	:Mr.B.Vijaya Karthikeyan
For R-1	:Mr.C.K.M.Appaji
For R-2	:Mr.G.Puhazh Gandhi
For R-7	:Mr.M.Veda Singh
For R-8	:Mr.C.Jawahar Ravindran
For R-3,4, & 6	:No Appearance
For R5	:M/sS.Justin Jose

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the order and decree, dated 09.11.2012 in M.CO.P.No.65 of 2007 passed by

<https://hcservices.ecourts.gov.in/hcservices/>



the learned Motor Accident Claims Tribunal/Subordinate Judge, Padmanabapuram.

2. It is a case of accident. On 17.06.2005 at about 08.45 p.m., while the claimant along with four others were travelling towards Nagercoil, Trivandrum to Nagercoil National Highways Road, west to east direction in a Tempo bearing Regn. No.TN-74-B-5612 driven by one Ramesh, while the tempo was coming near Kumarakovil Vilakku, dashed on the back side of a lorry bearing Regn. No. KLV 6309 driven by the 3rd respondent, after some time a lorry bearing Regn. No. TN-59-D-7325 driven by the 5th respondent in a rash and negligent manner without blowing horn and without observing the traffic rules dashed in the back side of the tempo bearing Regn. No. TN-74-B-5612. Due to the accident, the petitioner and some persons were sustained injuries.

3.The claimant has filed a petition in M.C.O.P.No.65 of 2007 on the file of the learned Motor Accident Claims Tribunal/Subordinate Judge, Padmanabapuram, seeking compensation.

4.Before the Tribunal, on the side of the claimants two witnesses were examined as P.Ws.1 & 2 and marked fourteen documents as Exs.P.1 to P.14 and two witnesses were examined as R.W.1 & R.W2 and Ex.R.1 was marked.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the insurance company and also on appreciating the evidences on record, held that the accident was occurred only, due to the rash and negligent driving of the driver of the 3rd respondent herein and hence, directed the appellant/insurance company is liable to pay a sum of Rs.3,00,800/-, as compensation.

6.Heard on either side. Perused the material documents available on record.

7. The learned counsel appearing for the appellant submitted that without appreciating the facts and circumstances of the case, the tribunal has fixed the entire liability upon the appellant. He further submitted that the tribunal failed to note that the appellant insured vehicle namely the lorry was not negligent and responsible for the accident and it was the tempo which dashed against the rear side of the lorry and caused the accident. He further submitted that the tribunal has failed to note that in the connected case in M.C.O.P.No.75 of 2005 on the file of the MACT, Kuzhithurai, the appellant was fully exonerated from the liability and the Judgment was marked as Ex.R.1.

8.The 1st respondent is owner of the tempo van. The driver of the lorry bearing Regn. No.KLV 6309 is 3rd respondent and the owner



of the lorry is 4th respondent. The 5th respondent herein is the driver of the lorry bearing Regn. No.TN-59-D-7325 which dashed the tempo after the accident. The owner of the lorry 7325 is 6th respondent. The 7th respondent is the insurance company of the tempo van. The appellant/7th respondent is the insurance company of the lorry bearing Regn.No.KLV 6309. The 8th respondent is the insurance company of the lorry bearing Regn. No.TN-59-D-7325.

9.The tribunal has awarded compensation and directed the appellant/insurance company to pay the compensation to the claimant. Aggrieved by the same, the appellant/7th respondent insurance company is before this Court.

10.Admittedly, the injured was travelled in a Tempo Van not in the Goods vehicle. It dashed on the backside of the lorry bearing regn. No.KLV 6309.

11.As per the evidence of P.W.1, the lorry bearing Regn. No.KLV 6309 suddenly stopped on the middle of the road. Therefore, the tempo which came behind the lorry dashed on the backside of the lorry. Again, another lorry dashed behind the Tempo.

12.The driver of the Tempo van died on the spot. The First Information was registered against the driver of the lorry bearing Regn. No. TN-59-D-7325/5th respondent.

13.The lorry bearing Regn. No.KLV 6309 driver preferred the complaint. As per the First Information Report, only after the injured were sent to the Hospital through ambulance, the lorry bearing Regn. No. TN-59-D-7325 dashed the Tempo and lorry. Therefore, only after the accident, the claimant was injured, the lorry bearing Regn. No. TN-59-D-7325 dashed the Tempo. Therefore, the lorry bearing Regn. No. TN-59-D-7325 is not responsible for the injuries.

14.Eventhough, the driver of the lorry bearing Regn. No. TN-59-D-7325 admitted the offence and paid penalty, he is not responsible for the injuries.

15.As per the First Information Report, the driver of the Tempo van drove the vehicle rashly and negligently dashed the lorry bearing Regn.No.KLV 6309. The driver of that lorry is the complainant. He was examined as R.W.2. As per his evidence, the driver of the Tempo Van is also responsible for the accident.

16.It is revealed from the Motor Vehicle report, front side of the tempo van was totally damaged. (Ex.P.3) the Motor Vehicle Report of lorry bearing Regn. No.KLV 6309 was marked as Ex.P.5. In the lorry both side and front side also damaged. It may dashed with some vehicle and stopped suddenly.



17. Therefore, both the driver of the tempo van and driver of the lorry bearing Regn.No.KLV 6309 are responsible for the accident. But, the tribunal has fixed liability only on the driver of the lorry bearing Regn.No.KLV 6309.

18. Both the driver (Tempo and lorry KLV 6309) are liable for the accident. No appeal has been preferred against the quantum. Hence, the 7th respondent herein and the appellant are liable to pay compensation.

19. Finally, this Civil Miscellaneous Petition is partly allowed regarding the liability only. The award of compensation Rs.3,00,800/- passed in M.CO.P.No.65 of 2007 by the learned Motor Accident Claims Tribunal/Subordinate Judge, Padmanabapuram, is hereby confirmed. The 7th respondent herein and the appellant are liable to pay compensation. The 7th respondent herein/insurance company and the appellant herein/7th respondent insurance company are directed to deposit 50% each of the award amount of compensation, within a period of six weeks, from the date of receipt of copy of the order. After depositing the compensation amount, the claimant is permitted to withdraw the same. The appellant/insurance company is permitted to withdraw if any excess amount deposited. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

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

The Motor Accident Claims Tribunal/
Subordinate Court,
Padmanabapuram

Copy to

The Section Officer, V.R.Section
Madurai Bench of Madras High Court, Madurai



+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-39329[F] dated
17/12/2021)

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