



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

**DATE ON WHICH RESERVED : 07.12.2021**

**DATE ON WHICH PRONOUNCED : 06.01.2021**

**CORAM:**

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

**C.M.A(MD) No.233 of 2010**

**and**

**MP(MD)No.2 of 2010**

WEB COPY

United India Insurance Company Ltd.,  
rep by its Branch Manager,  
81, C.T.W.G.C Road,  
Thoothukudi.

... Appellant/2<sup>nd</sup> Respondent

vs.

1.Ameer Batcha

... 1<sup>st</sup> Respondent/ 1<sup>st</sup> Respondent

2.Tamil Nadu State Transport Corporation  
rep by its General Manager,  
Virudhunagar.

... 2<sup>nd</sup> Respondent /Claimant

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 05.01.2009, in M.C.O.P.No.06 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Virudhunagar, Virudhunagar District.

|               |                       |
|---------------|-----------------------|
| For Appellant | : Mr.S.Royce Emmanuel |
| For R1        | : Dismissed           |
| For R2        | : Mr.S.C.Herold Singh |

### **J U D G M E N T**

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accident Claims Tribunal Cum Sub Court, Virudhunagar, Virudhunagar District in M.C.O.P.No.06 of 2008, dated 05.01.2009.

2. The 2<sup>nd</sup> respondent herein has filed a claim petition in M.C.O.P.No.06 of 2008 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Virudhunagar, Virudhunagar District, under Sections 140, 141, 142, 163A, 163B, 166 and 182A of the Motor Vehicles Act, claiming a sum of Rs.26,737/- (Rupees Twenty Six Thousand Seven Hundred and Thirty Seven Only ) as compensation for the damage of vehicle in a road traffic accident. The learned Tribunal, by the order/award dated 05.01.2008, has partly allowed the petition against the respondents and directed the respondents to pay a sum Rs.11,300/- (Rupees Eleven Thousand and Three Hundred Only) as compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit and



also directed the 2<sup>nd</sup> respondent/Insurance Company to pay costs. Feeling aggrieved, the 2<sup>nd</sup> respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The case of the claimant before the Tribunal:-

(i) On 25.07.2004, petitioner's bus was driven by its driver bearing Registration No. TN-43-N-0201 from Rameswaram - Virudhunagar and at about 12.20 p.m, when he was nearing the place of occurrence, the first respondent's vehicle driver, drove the same in a rash and negligent manner bearing Registration No.TN-65-B-5213 and came in the wrong direction and hit against the bus. As a result of which, the front side portion got damaged and some of the passengers also sustained injury in the accident.

(ii) With regard to the aforesaid accident, a complaint was lodged before the respondent police and a case has been registered in Crime No.151 of 2004 for the offences under Sections 279 and 337 of IPC against the first respondent's van driver.

(iii) In the aforesaid accident, the total damage caused to the bus is estimated as Rs.11377/- and contract labour charge is estimated as Rs.2,760/- and loss of income is estimated as Rs.12,500/-. Apart from that notice expense is estimated as Rs.100/- and hence, the petitioner claimed Rs.26,737/- as compensation with interest and cost.

(iv) At the time of accident, the first respondent's vehicle was duly insured with the 2<sup>nd</sup> respondent and hence, the respondents 1 and 2 are jointly and severally liable to pay compensation.

4. The petitioner / claimant did not take any steps for serving notice to the first respondent and hence, this petition was dismissed against him.

5.The case of the second respondent, who is the appellant herein is that the accident took place not because of the rashness on the part of the first respondent's vehicle driver, but on the part of the petitioner's vehicle driver. When he attempted to over-take a car, which was stopped in the road, the petitioner's vehicle driver attempted to over-take the same and caused the incident. The police complaint has been wrongly given.

6. During enquiry before the Tribunal, on the side of the petitioner / claimant, two witnesses were examined and six documents marked. On the side of the respondents, no witnesses were examined and no documents marked.

7.At the conclusion 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

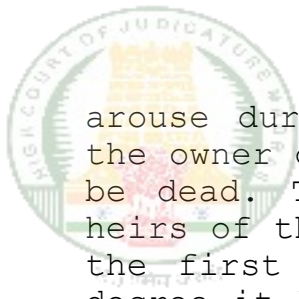


8.Regarding compensation, it fixed the total amount of Rs.11,300/- (Rupees Eleven Thousand and three Hundred Only). The learned Tribunal has also directed the second respondent / Insurance Company to pay interest for the aforesaid amount at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and also directed them to pay the costs to the petitioner.

9.Feeing aggrieved, the 2<sup>nd</sup> respondent/Insurance Company has filed the present Civil Miscellaneous Appeal mainly on the ground that it is a case of contributory negligence and the Tribunal wrongly fixed the sole responsibility upon the first respondent's vehicle driver and with regard to the assessment also it is disputed.

10. Subsequent to the occurrence, a case was registered on the file of the Kamuthi Police Station, in Crime No.151 of 2004. Wherein, the complaint was lodged by the claimant's driver wherein, he stated the same thing as narrated in this petition. Even though, the occurrence is not disputed by the appellant / Insurance Company, as mentioned earlier, they placed contributory negligence. To prove the same, no witness was examined on the side of the appellant / Insurance Company. The contention that the claimant's driver caused the incident while over-taking the Ambassador car, which was stationary in the place of occurrence, except the First Information Report, no document is available to show the manner of the accident. When we go by the evidence of P.W.2 / driver of the bus, it is seen that only the first respondent's vehicle driver was negligent. It was not even suggested to him that he also contributed to the occurrence. So, the evidence of P.W.1 is not challenged by way of cross examination. The belated contention on the part of the appellant that it is a case of contributory negligence is not accepted and on the basis of the negligence, the Tribunal come to the conclusion that only the first respondent's vehicle driver was negligent. I find no reason to differ from that view and findings. So, regarding the negligent aspects, the argument of the appellant that contributory negligence must be fixed is rejected.

11. With regard to the quantum of the Tribunal has assessed the quantum as mentioned above on the basis of Ex.P.4 / Spare Parts Bill wherein, the labour charges were also included, but the Tribunal has rejected that. Revenue loss was also rejected by the Tribunal. There is no cross objection by the claimant. A perusal of Ex.P.2, shows that there were excessive damage in the front side of the vehicle. Ex.P.3 is the Job card of the claimant, which indicates the total estimate for the repair. So, from the evidence of P.W.1, officials from the Transport Corporation and from the document produced, the Tribunal assessed the same at the rate as pointed out above. It is not excessive and hence, the quantum fixed by the Tribunal requires no interference. Accordingly, it is confirmed. One point which



arouse during the course of argument is that before the Tribunal, the owner of the vehicle namely the first respondent was reported to be dead. The claimant did not take any steps to bring the legal heirs of the first respondent on record. So it was dismissed against the first respondent. But, in the cause title as well as in the decree it has been wrongly noted by the Tribunal that batta was not paid by the claimant for serving notice to the first respondent and so it stands dismissed against him. But, as mentioned earlier, the same mistake was also committed at the time of filing of the appeal. Now, only point to be decided is, when the insured was dead and no steps was taken by the claimant to bring the legal heirs on record, whether it will make the award a nullity. Section 155 of Motor Vehicles Act deals with this point, wherein it is stated that notwithstanding the death of the insured, the claim will lie against the insurer. No doubt, the estate of the insured person must be represented by the legal representatives. Even if the legal representatives were not brought on record either during the pendency of the claim before the Tribunal or at the appellant stage, the right of the claimant is protected under Section 155 of Motor vehicles Act. So I find that the the award passed to the claimant is not a nullity.

12.In view of the same, the award passed by the Motor Accident Claims Tribunal Cum Sub Court, Virudhunagar, Virudhunagar District, in M.C.O.P.No.06 of 2008 dated 05.01.2009, is confirmed.

13.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

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,  
Third Additional Subordinate Court,  
Thiruchirappali



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

+1 CC to M/s.ROYCE IMMANUVEL, Advocate ( SR-557[F] dated  
08/01/2021 )

C.M.A (MD) No.233 of 2010  
and  
MP (MD) No.2 of 2010  
06.01.2021

PM(CO)  
KB(03.03.2021) 5P 5C