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C.M.A.No.1701 of 2013

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 28.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1701 of 2013

and

M.P.No.1 of 2013

National Insurance Company Limited,
930, Sathy Road,
Gandhipuram,
Coimbatore.

... Appellant/4th Respondent

Vs.

1.Thangavel

...Respondent/Petitioner

2.Chandrasekar

...Respondent/1st Respondent

3.The Managing Director,
Tamil Nadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore – 43.

...Respondent/2nd Respondent

4.K.R. Health Care Private Limited,
93, Mettupalayam Road,
Periyanaickenpalayam,
Coimbatore.

...Respondent/3rd Respondent



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Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 28.02.2011 in M.C.O.P.No.134 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Motor Accidents Claims Tribunal, Tiruppur at Coimbatore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.MA.P. Thangavel for R1

Mr.A.Sundaravadanam for R3

R2 and R4 - Served

- No appearance

JUDGMENT

The 4th respondent Insurance Company has challenged the Award passed by the learned Additional District and Sessions Judge, Fast Track Court No.V, Motor Accidents Claims Tribunal, Tiruppur at Coimbatore, insofar as it has directed the Insurance Company to



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compensate the petitioner though the Tribunal has fastened 35% of the negligence upon the petitioner. The parties are referred to in the same rank as before the Tribunal.

2.The Insurance Company was arrayed as the 4th respondent in the claim petition. The 3rd respondent is the insured and the owner of the van which was driven by the petitioner. The 1st respondent is the driver of the 2nd respondent's bus.

3.The facts in brief are as follows:

The petitioner had filed the above claim petition seeking compensation of a sum of Rs.20lakhs for the injuries sustained by him in a road accident on 04.01.2009. It is his case that on the said date at around 04.00pm, when he was proceeding in the van bearing Registration No.TN 38AB 0268, a bus belonging to the 2nd respondent driven by the 1st respondent in a rash and negligent manner, came in the opposite direction and hit the van. As a result of which, the



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petitioner was thrown out and sustained grievous injuries. The petitioner was immediately rushed to Palladam Government Hospital and thereafter, to K.G. Hospital, Coimbatore and to Kalpana Hospital, Goundempalayam. It is the contention of the petitioner that he is undergoing treatment at the KRH, Periyanaickenpalayam. He would submit that the injuries sustained by him were grievous. He would further submit that he is employed as a driver with the 3rd respondent drawing a monthly income of Rs.6,000/-.

4.The 4th respondent Insurance Company had filed their counter *inter alia* denying the allegations in the claim petition and contending that the accident had occurred only on account of the rash and negligent driving by the 1st respondent who is the employee of the 2nd respondent and therefore, it was only the 2nd respondent who was liable to pay the compensation. Without prejudice to the above contention, the 4th respondent had also contended that the compensation claimed was excessive.



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5.The Tribunal on considering the evidence had come to the conclusion that both the driver of the 2nd respondent's bus i.e., the 1st respondent as well as the petitioner who is the driver of the 3rd respondent van had contributed to the accident. Insofar as the Transport Corporation is concerned, 65% of liability was fastened on them and 35% of liability was fastened on the 3rd respondent and the Insurance Company herein was directed to pay the said sum. Ultimately, a sum of Rs.7,11,852/- was awarded by the Tribunal. The Insurance Company is aggrieved by the fact that though the petitioner, is the tortfeasor and the driver of the 3rd respondent's van, they were not liable to compensate him.

6.Mr.D.Bhaskaran, learned counsel for the 4th respondent Insurance Company would submit that the petitioner is not entitled to get any compensation and in support of the said argument, he would rely upon the Judgment in *(2003) 6 Supreme Court Cases 137*



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[Tamil Nadu State Transport Corporation, Tanjore, rep. By its MD

v. Natarajan and others] and an unreported Judgment of the Division Bench of this Court in the case of ***Oriental Insurance Company Limited v. Muthulakshmi and others in C.M.A.Nos.4118 of 2019, etc.***, He would also rely upon the Judgment of the Hon'ble Supreme Court in ***(2006) 2 Supreme Court Cases 641 [National Insurance Company Limited vs. Mastan and another]*** as well. He would also rely upon the Judgment of a Single Judge of this Court reported in ***2006 (2) TN MAC 290 [Manoharan v. D.Kannan and others]***.

7.The learned counsel for the 4th respondent Insurance Company would further submit that the petitioner has not questioned the apportionment of the liability inasmuch as in another appeal arising from the same accident, the Transport Corporation had fled an appeal C.M.A.No.919 of 2019. Even in this appeal, the fastening of 35% of liability on the 3rd respondent was upheld as the appeal was dismissed.



He would therefore submit that in the light of the above, the Tribunal has committed a grave error in directing the 4th respondent Insurance Company alone to compensate the petitioner.

8.Per contra, Mr.MA.P. Thangavel, learned counsel appearing for the petitioner would submit that the petitioner was driving the vehicle as an employee of the 3rd respondent and since the insurance is a comprehensive one he is entitled to the compensation under the Workmen's Compensation Act. He would further argue that considering the fact that in a connected petition, the entire liability has been fastened upon the Transport Corporation, this Court cannot take a different view. In support of his arguments, he would rely upon the Judgment of this Court in **2007 (2) TN MAC 147 [S.Palaniswamy and another v. Chinnkali and others]**, wherein the learned Single Judge has observed that there cannot be different findings by different Courts in respect of one set of fact. He would also submit that in the



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connected appeal, the liability of the 2nd respondent Transport Corporation has been confirmed and therefore, the 4th respondent cannot take a different stand. An argument was also advanced by the learned counsel for the petitioner that in the event of the Insurance Company being exonerated, the liability may be completely mulcted on the 3rd respondent/owner of the van. This argument is fallacious inasmuch as the Tribunal has clearly held that the petitioner had also contributed to the accident. Therefore, he cannot seek to have a premium for his wrong.

9.Heard the learned counsels appearing on either side and perused the papers.

10.The Tribunal has held that both the drivers were responsible for the accident. Against the Award from the very same claim petition, the Transport Corporation had filed C.M.A.No.919 of 2019. The 1st petitioner who was represented by his counsel had made their



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submissions before the Court. There upon, the learned Judge was pleased to dismiss the appeal confirming the finding of the Tribunal that 65% of the liability has to be fastened on the 1st respondent/driver of the Transport Corporation bus and 35% on the driver of the 3rd respondent, viz., the petitioner. Therefore, applying the ratio of the case reported in **2007 (2) TN MAC 147 [S.Palaniswamy and another v. Chinnkali and others]**, the petitioner is estopped from taking a different stand, particularly, when they have acquiesced to the order passed in C.M.A.No.919 of 2019 without further challenging the same.

11.The Tribunal has held that the petitioner is a tortfeasor. Therefore, considering the above fact, the petitioner is not entitled to get compensation from the 4th respondent and the 2nd respondent herein. The Hon'ble Supreme Court in the Judgment in **(2003) 6 Supreme Court Cases 137 [Tamil Nadu State Transport**



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Corporation, Tanjore, rep. by its MD v. Natarajan and others], have
observed at Para 9 as follows:

“9. From the facts of the case and nature of the claim stated above, we find absolutely no justification in law for the Division Bench of the Madras High Court in its impugned order imposing liability to the extent of 50% on the appellant/Corporation. The Division Bench of the High Court completely over-looked that the claimant himself was driver of the Corporation bus and was found negligent to the extent of 50% for causing accident. In view of the above finding of contributory negligence on the part of the claimant as driver of the Corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of the claimant himself. The claim petition did not make the Corporation as a party to the claim obviously because



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the claimant exercised option of approaching the Claims Tribunal under the Motor Vehicles Act against the owner and insurer of the private bus. He did not file any claim under

the Workmen Compensation Act against the employer. Since the Corporation was not at fault and the accident was caused because of the contributory negligence of the drivers of both the buses, the Corporation could not be held liable under the provision of Motor Vehicle Act. It was not a claim based on 'no fault liability'. It was a claim petition filed by the claimant against the owner and insurer of the private bus. The claimant is also represented before us and on his behalf it is stated that



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he has been given compassionate appointment on suitable alternative job and he never desired to obtain any other compensation from his employer. The Division Bench of the High court therefore committed a serious error in apportioning and fastening 50% liability of compensation on the appellant/Corporation. This part of the award

therefore deserves to be set aside. The liability of the respondent/insurance company as insurer of private bus is found to be only to the extent of 50% of the total compensation determined. The total compensation determined is Rs. 2,09,800/- [Rupees two lakh nine thousand & eight hundred] only. Fifty per cent liability of the insurer of the private bus would therefore be Rs.



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1,04,900/- [Rupees one lakh four thousand & nine hundred] only. On the aforesaid amount, the claimant would be entitled to an interest rate at 9% per annum from the date of filing the claim petition as awarded.”

12.In the Judgment reported in **(2006) 2 Supreme Court Cases 641 [National Insurance Company Limited vs. Mastan and another]**, once again the Hon'ble Supreme Court after considering the provisions of Sections 143 and 147 of the Motor Vehicles Act had held that once the appellant elects the forum then he cannot thereafter approbate and reprobate inheres in it and called upon the Court to consider the claim under the provisions of the other Act, namely, the Workmen's Compensation Act and not the Motor Vehicles Act. Therefore, the argument of the learned counsel that this Court could grant compensation by applying of Workmen's Compensation Act, is without any basis. The Division Bench of our High Court in the case



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of ***Oriental Insurance Company Limited v. Muthulakshmi and others in C.M.A.Nos.4118 of 2019, etc.***, while considering a similar position held as follows:

“....As it was held that the deceased Mani @ Ayyappan, who drove the Tempo Traveller Van has contributed to the accident to the extent of 50%, the appellant insurance company need not deposit any amount to the claimants in MCOP No. 388 of 2008.”

Therefore, on a conjoint reading of the above, it is clearly evident that the petitioner being a tortfeasor is not entitled to be compensated for his wrong. Therefore, the Award passed by the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.



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Index : Yes/No

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Speaking order / Non speaking order
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To

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Fast Track Court No.V,
Motor Accidents Claims Tribunal,
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P.T. ASHA, J,

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