



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.09.2021

Delivered on : 19.01.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) No.896 of 2013

and M.P. (MD)No.1 of 2013

DIVISIONAL MANAGER,,
NATIONAL INSURANCE CO.LTD. S.N.HIGH ROAD ,
TIRUNELVELI..

... Appellant/ Respondent

Vs

PARAMASIVAN,

... Respondent/petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the award dated 10.07.2009 and made in M.C.O.P.No.416 of 2005 on the file of the Motor Accident Claims Tribunal and Principal Sub Court, Tenkasi.

For Appellant : Mr.A.K.Baskara Pandian
For Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award dated 10.07.2009 and made in M.C.O.P.No.416 of 2005 on the file of the Motor Accident Claims Tribunal and Principal Sub Court, Tenkasi.

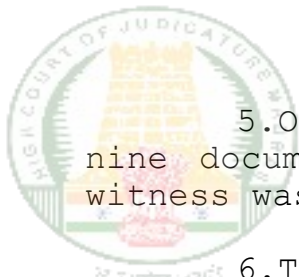
2.The appellant herein is the respondent and the respondent herein is the claimant in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No.416 of 2005 is as follows:-

The petitioner is the owner of lorry bearing Registration No.TN-72-U-9969. On 19.11.2002, when the loaded lorry was taken along the Sivakasi - Srivilliputhur road, a Government Bus bearing Registration No.TN-59-N-0591 came from the opposite direction in a rash and negligent manner, dashed against the lorry, then dashed against a mile stone. The goods in the lorry were damaged and the lorry was also damaged. The value of damaged goods worth Rs.5,00,000/-. The petitioner claimed a sum of Rs.10,00,000/-.

4.Brief substance of the counter filed by the respondent in M.C.O.P.No.416 of 2005 is as follows:-

The claim is excessive. The accident took place due to the rash and negligent driving of the lorry driver. The respondent had paid Rs.58,386/-on 28.03.2003, but, the payment was suppressed in the petition.



5. On the side of the petitioner, one witness was examined and nine documents were marked. On the side of the respondent, one witness was examined and one document was marked.

6. The Tribunal, after considering both sides, has awarded a sum of Rs.72,075/- as compensation. Against the same, the respondent therein has filed this Civil Miscellaneous Appeal.

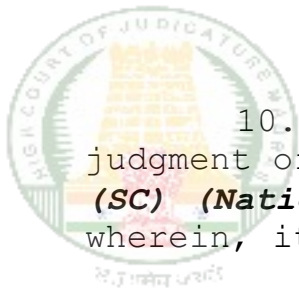
7. On the side of the appellant, it is stated that under Section 165 of the Motor Vehicles Act, an insured cannot adjudicate for a claim for his own damages. The claim petition itself is not maintainable. The claimant is not a third party, he is the owner of the vehicle and there is no liability on the part of insurance company and the award is excessive.

8. The learned counsel for the appellant relied upon a judgment of the Hon'ble Supreme Court reported in **2007-2-TNMAC - 56 (SC) (Oriental Insurance Co. Ltd., V. Jhuma Saha and others)**, wherein, it is stated as follows:-

"Liability of Insurer - extent the deceased, owner of the vehicle, while driving dashed against tree on road side and the vehicle insured and additional premium of death of driver / conductor paid. The Tribunal, therefore, found liability cover by Insurance Policy and the contention that in view of Section 147, jurisdiction of Tribunal confined to a third party claim. The Accident is not involving motor vehicle other than one which deceased was driving and deceased / owner of vehicle himself was to be blamed for accident."

9. The learned counsel for the appellant further relied upon a judgment of the High Court of Bombay reported in **2018-1-TNMAC-208 (Divisional Manager, United India Insurance Co. Ltd., V. Subhash and others)**, wherein, it is stated as follows:-

"Own damages claim - If, can be entertained by Tribunal under Section 166 of the Motor Vehicles Act, claim of damages to property of this party alone can be entertained by Tribunal constituted under Section 165. Conjoint reading of Sections 166 and 165 makes clear that "own damage claim" cannot be entertained by Claims Tribunal. For damages caused to property of third party alone, claim can be made before Tribunal. Claims, which arise out of statutory liability, alone can be adjudicated by Tribunal. Claim arising out of contractual liability cannot be entertained by the Tribunal and the Claim seeking compensation for damages caused to own vehicle."



10.The learned counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court reported in **2018-2-TNMAC - 286 (SC) (National Insurance Co. Ltd., V. Ashalata Bhowmik and others)**, wherein, it is stated as follows:-

"The deceased was not a third party, but, owner-sum-driver of the vehicle and the accident due to rash and negligent driving of the deceased himself, no other vehicle involved in the accident. Claim under Section 166 of the Motor Vehicles Act, is not maintainable, on basis of own fault/ negligence and the Insurer is not liable to pay compensation, since no liability can be fastened against the Insurer. The High Court is not justified in directing the Insurer to pay compensation as determined by the Tribunal"

11.Name of the respondent was printed and called upon, though sufficient opportunity was given, none appeared for the respondent. Hence, no oral argument on the side of the respondent is recorded and this order is passed on merits.

12. The claimant claimed a sum of Rs.3,00,000/- towards the goods in the vehicle. In the policy, it is clearly stated that the insurance company is not liable for damages to property conveyed in the vehicle. Hence, it is decided that the claimant is not entitled to claim damages for the goods.

13. It is seen that the F.I.R was registered against the driver of the lorry bearing Registration No.TN-72-U-9969. EX.P1 is the F.I.R. Ex.P.6 is the charge sheet. Ex.P.7 is the judgment of the criminal Court. Since the claimant is not a third party and since the accident took place due to the negligence of the driver of the lorry, the claimant is not entitled to claim compensation. Hence, this Civil Miscellaneous Appeal is allowed and the award, dated 10.07.2009, made in M.C.O.P.No.416 of 2005 on the file of the Motor Accident Claims Tribunal and Principal Sub Court, Tenkasi. is hereby set aside. Consequently, connected M.P. is closed. No.Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Motor Accident Claims Tribunal -
Principal Sub Court,
Tenkasi.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.896 of 2013
19.01.2022

MMS (CO)
KB (18.02.2022) 4P 4C