



C.M.A.No.2604 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2604 of 2008

and

MP.No.1 of 2018

P.R.Anandan

...Appellant

Vs.

1. A.Uthiravel

2. United India Insurance Co.,  
Rep. By its Divisional Manager,  
7<sup>th</sup> Floor, Tarapore Tower,  
826, Anna Salai, Chennai – 2.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 17.12.07 passed in M.C.O.P.No.1430 of 2003 on the file of the IV Small Causes Judge, Chennai by dismissing the claim as against this appellant.

For Appellant : Mr.N.Sivaprakash

For Respondents : Mrs.Saleem Fathima, for R1  
: Mr.Arun Kumar, for R2



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### **JUDGEMENT**

Aggrieved by the Judgement and Decree dated 17.12.2007 made in M.C.O.P.No.1430 of 2003 on the file of the Motor Accident Claims Tribunal IV Small Causes Judge, Chennai, the appellant has come up with this Appeal.

2. The case of the appellant is that, on 24.3.2002 at about 13.30 hours, when the 1<sup>st</sup> respondent/claimant along with other persons, were travelling in the lorry bearing Regn. No.TN-21-Z-4755 belonging to the appellant insured with the 2<sup>nd</sup> respondent, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against a parked stationery lorry bearing Regn.No.TN-23-C-7389, as a result of which, the persons travelling in the lorry suffered grievous injuries and two of the persons died. Therefore, claim petitions were filed seeking compensation at the hands of the appellant and the 2<sup>nd</sup> respondent to be paid jointly and severally. After contest, the Tribunal, vide impugned judgment awarded a compensation of Rs.90,000/- in favour of the 1<sup>st</sup> respondent and fixed the entire liability as against the appellant/owner of the lorry.



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3. Learned counsel appearing for the appellant submitted that, the vehicle was insured with the 2<sup>nd</sup> respondent and, therefore, the 2<sup>nd</sup> respondent has to indemnify the appellant with regard to the accident. It is the further submission of the learned counsel that the vehicle was utilised without his knowledge and permission and, therefore, no liability can be fastened on him. He further submitted that, for the very same accident, some of the injured persons, who travelled along with the 1<sup>st</sup> respondent/claimant, have filed their respective claim petitions before the Sub Court, Tindivanam in a batch of cases, wherein the Tribunal had fixed 50%-50% negligence and though the said fact was brought to the knowledge of the Motor Accident Claims Tribunal IV Small Causes Judge, Chennai, however, without adverting to the above, which have been proved through materials, the Tribunal has awarded the compensation and fixed the entire liability as against the appellant/owner of the lorry in which the claimant travelled, which deserves to be interfered with.

4. Per contra, learned counsel appearing for the 1<sup>st</sup> respondent/claimant submitted that the Tribunal has rightly assessed the



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compensation payable to the claimant and it is the duty of the appellant to pay the compensation, as liability has been fastened on him and, therefore, no interference is warranted with the said award.

5. Learned counsel appearing for the 2<sup>nd</sup> respondent/insurance company submitted that, aggrieved by the above said order passed by the Sub Court, Tindivanam in a batch of claim petitions filed by the other injured persons, wherein the Tribunal had fixed 50%-50% negligence, the insurance company have also preferred appeals before this Court.

6. This Court gave its careful consideration to the submissions advanced on either side and perused the materials available on record.

7. The accident is not in dispute. The accident had happened in broad daylight and that too, the offending vehicle had dashed against the parked stationery vehicle. The parked stationery vehicle is not alleged to have been parked on the road nor it is alleged that the tail light was not glowing. In the absence of any contention with regard to the delinquency on the parked vehicle, the only inference that could be drawn is that the



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offending vehicle was driven in a rash and negligent manner, which had resulted in the accident and, therefore, necessarily, the negligence is on the offending vehicle, belonging to the appellant.

8. Though the appellant contends that the vehicle was not taken with his permission and, therefore, he cannot be made liable, however, a careful perusal of the order reveals that the Tribunal has discussed threadbare the implications of moving the lorry without permission and the manner of the lorry being moved by the driver of the lorry clearly exhibits implicit permission by the owner. The reasoning given by the Tribunal coupled with the other materials available on record reveal that the lorry was moved with the knowledge of the appellant and, therefore, the liability on the appellant cannot be said to be erroneous.

9. The respective claimants in the lorry were held to be gratuitous passengers, inspite of the fact that the vehicle was insured with the 2<sup>nd</sup> respondent, as the claim made by the claimants that they were travelling in furtherance of their work was negated by the Tribunal based on the evidence of P.W.2. Though the lorry had carried a policy with the 2<sup>nd</sup>



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respondent in which there was insurance on the lorry and for six persons to travel in the lorry, but the said insurance is only when the travelling of the persons is connected with their employment. In view of the fact that the claimants were not travelling in pursuance to their work, the Tribunal has rightly held that the insurance company cannot be made liable. Therefore, the liability has been rightly fastened on the appellant, the owner of the lorry, which is based on proper analysis of the materials and, therefore, the said finding does not require any interference.

10. Insofar as the compensation awarded by the Tribunal to the claimant herein, the Tribunal has taken into consideration the nature of injuries suffered by him and after proper appreciation has awarded the compensation, which cannot be said to be excessive or arbitrary and, therefore, this Court confirms the said award passed in favour of the claimant.

11. During the course of submissions, it is brought to the notice of this Court that, the appellant had already deposited the no fault liability amount and the same was withdrawn by the 1<sup>st</sup> respondent/claimant.



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12. For the reasons aforesaid, this appeal is dismissed confirming the award passed by the Tribunal in M.C.O.P.No.1430 of 2003 dated 17.12.2007. The appellant is directed to deposit the entire amount awarded by the tribunal along with interest at 7.5% per annum, without prejudice to his rights to the credit of M.C.O.P.No.1430 of 2003. In case the appellant fails to deposit the said amount within the period prescribed above, it is open to the 1<sup>st</sup> respondent/claimant to work out his remedies in the manner known to law for realising the said amount. Further, it is open to the appellant to proceed against the insurance company/2<sup>nd</sup> respondent for recovering the amount on the basis of the award passed by the Sub Court, Tindivanam in the claim petitions in respect to the very same accident, if so advised. There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

**30.10.2023**  
**(1/2)**

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|----------------|------------|
| Index          | : Yes / No |
| Speaking order | : Yes / No |
| NCC            | : Yes / No |



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**M.DHANDAPANI, J.**

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To

1.The Motor Accident Claims Tribunal  
IV Small Causes Judge, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.2604 of 2008  
and  
MP.No.1 of 2018  
(1/2)

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