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C.M.A.Nos.1885 of 2009 & 2807 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.Nos.1885 of 2009 & 2807 of 2010
and M.P.Nos.1 of 2009 & 1 of 2010

National Insurance Company Ltd.,
Kangayam. .. Appellant in C.M.A.No.1885 of 2009

Versus

1.M.Boopathy
2.R.Mahalingam
3.K.Sivasamy
4.A.Muthusamy
5.Govindaraj
6.P.Premalatha

7.United India Insurance Company Ltd.,
139, Kumaran Road, Tirupur-641 601.

8.M/s.Exim International,
27/33, Nahindas Main Road,
Mumbai District, Maharastra State.

9.National Insurance Company Ltd.,
104, Emarar House, 3rd Floor,
Mumbai, Sameenar Marg,
Mumbai – 400 023. .. Respondents in C.M.A.No.1885 of 2009



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1.National Insurance Company Ltd.,
Kangayam

2.National Insurance Company Ltd.,
104, Emarar House, 3rd Floor,
Mumbai, Sameenar Marg,
Mumbai – 400 023. .. Appellants in C.M.A.No.2807 of 2010

Versus

1.M.Govindaraj
2.K.Sivasamy
3.A.Muthusamy

4.M/s.Exim International,
27/33, Nahindas Main Road,
Mumbai District,
Maharastra State. .. Respondents in C.M.A.No.2807 of 2010

Prayer: Appeals under Section 173 of the Motor Vehicles Act against the judgment and decree dated 09.07.2008 & 18.08.2008 made in O.P.Nos.856 of 2003 & 184 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court No.4, Coimbatore at Tiruppur.



C.M.A.Nos.1885 of 2009 & 2807 of 2010

For C.M.A.No.1885 of 2009

WEB COPY For Appellant : Mr.D.Bhaskaran

For R1 : Mr.J.Franklin

For R5 : Mr.S.S.Swaminathan

For R9 : Mr.D.Bhaskaran

For C.M.A.No.2807 of 2010

For Appellants : Mr.D.Bhaskaran

For R1 : Mr.S.S.Swaminathan

For R2 to R4 : Not Ready in Notice

COMMON JUDGMENT

Civil Miscellaneous Appeal No.1885 of 2009 has been filed by the fourth respondent in MCOP No.856 of 2003 dated 09.07.2008 wherein the Tribunal has awarded compensation to the claimant for a sum of Rs.1,76,519/-.

2. Civil Miscellaneous Appeal No.2807 of 2010 is filed by the third and fifth respondent Insurance Company challenging the award passed in MCOP. No.184 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court-4, Tiruppur.



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3. Since, both the Civil Miscellaneous Appeals are arising out the same award, both the Appeals are taken up together for hearing and common judgement is passed.

4. On 23.12.2002 at about 3.30 p.m., in front of Krishna Mill on the Tirupur to Avinasi Road, three vehicles involved in accident. One of the claimant Boopathy was driving his car bearing Registration No.M.H.01-S-6106 and one Mahalingam was driving his car bearing Registration No.TN-33-Z-7219 towards Avinasi from South to North and third vehicle is car driven by another claimant namely Govindaraj in the opposite direction i.e., towards Tirupur and it is a case of composite negligence. The claimants Govindaraj and Boopathy car drivers have filed separate MCOPs claiming compensation for the injuries sustained by them before the Motor Accident Claims Tribunal (Additional District Judge/FTC-4, Tirupur). In the claim petition filed by the Boopathy (MCOP No.856 of 2003), the Tribunal has held that the car driven by the Govindaraj and the van driver Mahalingam are responsible for the accident. In the claim petition filed by the Govindaraj (MCOP. No.184 of 2004), the Tribunal has held that Boopathy and Van



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driver Mahalingam are responsible for the accident. Boopathy was not a party to the proceedings.

5. In the claim petition filed by the Boopathy, Govindaraj not contested the claim and remained ex-parte and award was passed against Govindaraj fixing 50% of the liability.

6. The appellant National Insurance Company is the insurer of the goods van which was driven by Mahalingam and the car driven by Govindaraj.

7. Since Govindaraj is held as tort-feasor, in MCOP.No.856 of 2003 and in the petition filed by him in MCOP.No.184 of 2004, Boopathy is held as tort-feasor, the Insurance Company seeks to absolve it from payment of 50% of compensation to Govindaraj.

8. Learned counsel for appellant representing Boopathy submitted that Boopathy is not a party in the claim petition in MCOP No.184 of 2004 which was filed by the Govindaraj in which liability is also fixed on



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Boopathy. In the claim petition filed by Boopathi, there is clear finding that the Govindaraj and the other driver are alone responsible for the accident and prays to confirm the award passed in MCOP.No.856 of 2003.

9. Learned counsel representing Govindaraj has submitted that, if the pendency of the claim petition filed by Boopathy was brought to the notice of the Tribunal, it could have averted rendering conflicting finding and having failed to do so, the Insurance Company has to accept both the awards and pay the compensation.

10. I have considered the submissions made by both parties and also perused the records.

11. Admittedly, both the MCOPs are arising out of one accident and two separate claim petitions have been filed by the two Drivers of the vehicles. In both the claim petitions, it is held that claimants of both MCOPs as respondents are also equally responsible for the accident, which shows that there is conflicting finding pronounced by the very same Court that too in a short span of one month time. It is unfortunate that no parties to the



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proceedings have brought to the knowledge of the Tribunal about the pendency of the two claim petitions arising out of one accident and if the same would have been brought to the knowledge of the Tribunal, the conflicting judgement would not have been passed by Tribunal. In these Appeals also this Court could not independently consider the merits of each claim petitions. If the exercise was taken by this Court then it may result in passing conflicting judgments with regard to the accident, since finding shall be rendered based on the evidence placed in each case. In the said circumstances, this Court is of the opinion that the matter has to be remanded back to the Tribunal and the additional evidence needs to be recorded afresh by affording opportunity to both the parties concerned and a finding has to be recorded with regard to liability. Only on this point alone, award passed in both the MCOPs are hereby set aside.

12. With regard to the quantum of compensation, Insurance Company contended that quantum assessed is on the higher side and I am of the view that since liability is a major issue which has to be reconsidered by the Tribunal, the quantum of compensation shall also to be considered along with the liability. It is made clear that for the purpose of deciding quantum



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of compensation no additional evidence shall be adduced on both sides.

Accordingly, without expressing any opinion on the award rendered by the Tribunal, this Court remands back the matter for fresh enquiry and Tribunal is directed to dispose of the matter within a period of three months from the date of receipt of copy of this order.

13. With the above directions, this Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
Speaking Order: Yes/No.
jai

16.08.2023

To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Fast Track Court No.4,
Coimbatore at Tiruppur.

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

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K.RAJASEKAR, J.

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