



C.M.A.Nos286 & 287 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2024

CORAM:

**The HONOURABLE MR.JUSTICE K.RAJASEKAR**

**C.M.A.Nos.286 & 287 of 2013**  
**and M.P.No.1 of 2013**

National Insurance Company Ltd.,  
Branch Office-2,  
Maruthi Complex,  
Omalar Main Road, Salem-4.

...Appellant in both CMAs'

Vs.

1. K.Jayavel
2. Ponnammal
3. Oriental Insurance Company Limited,  
Dwaraka 79, N.H.Road,  
Chennai-600 034.

4. M.Perumal ..Respondents in CMA No.287 of 2013

1. Kumar
2. Ponnammal
3. Oriental Insurance Company Limited,  
Dwaraka 79, N.K.Road,  
Chennai-600 034.

4. M.Perumal ..Respondents in CMA No.286 of 2013



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**Common Prayer :** Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 04.02.2008 made in M.C.O.P.Nos.24 & 37 of 2006 on the file of the Motor Accident Claims Tribunal, (Additional District Judge), Dharmapuri.

In all CMAs'

For Appellant : M/s.D. Bhaskaran

For Respondents : Mr.M. Selvam for R1

: M/s.R. Sreevidhya for R3

### **COMMON JUDGMENT**

These Civil Miscellaneous Appeals are filed by insurance company in M.C.O.P.Nos.24 &37 of 2006 awarded by the Motor Accident Claims Tribunal, (Additional District Judge), Dharmapuri.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. Since, both the Civil Miscellaneous Appeals are arising out the same accident, both the Appeals are taken up together for hearing and



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common judgement is passed.

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4. M.C.O.P.No.37 of 2006 is filed by K.Jayavel and M.C.O.P.No. 24 of 2006 was filed by one Kumar seeking compensation for the injuries sustained by them in the accident taken place on 26.03.2005 about 9:30PM. The claimant Jayavel was the lorry driver and Kumar was the cleaner. The claimant Jayavel was driving the lorry bearing Reg. No. TN-27-P-2788 which belongs to the first respondent Ponnammal from Seelanaickampatti to Kondalampatti road on the left hand side with due care and attention. At that time, a lorry bearing Reg. No. KA-01-C-9955 belongs to the third respondent Perumal insured with the fourth respondent (appellant herein) came in the opposite direction in rash and negligent manner and hit on the lorry driven by Jayavel due to which both the claimants sustained serious injuries. For the injuries sustained by them, they have filed separate claim petitions.

5. The first and third respondents herein are the owners of the relevant vehicles have not contested the claim petition and remained ex-



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parte.  
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6. The second respondent filed his counter and contented that the claimant Jayavel drove the lorry with due care and attention but the driver of the lorry bearing Reg. No. KA-01-C-9955 came in a rash and negligent manner and caused the accident. Hence, the second respondent is not liable to pay any compensation and they are unnecessary parties in the claim petition and prays to dismiss the claim against them.

7. The fourth respondent filed his counter and contended that the driver of their lorry is not responsible for the accident and stated that the FIR was filed against the claimant Jayavel and his negligent act is responsible for the accident. Hence, respondent Insurance Company is not liable to pay the compensation and prays to dismiss the claim petition.

8. The Tribunal has recorded the evidence in both the cases and examined PW1 to PW3 on the side of the claimants and Exs.P1 to P12 were marked. On the side of the respondent neither oral evidence nor



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documents were marked.

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9. In point no.1, the Tribunal has held that the rash and negligent act of the driver of the lorry of the third respondent is responsible for the accident and in Point Nos. 2 and 3., the Tribunal has quantified the quantum of compensation and awarded a sum of Rs.1,76,220/- to the claimant Jayavel and Rs.12,130/- to the claimant Kumar. Aggrieved over the finding relating to the negligent act of the driver, the insurer of the third respondent vehicle has come forward to file both these appeals.

10. The learned counsel for the Insurance Company has submitted that criminal case was registered only against the claimant Jayavel and in the cross examination of the claimants, it was elicited that the claimant has driven the vehicle in wrong side and caused the accident and that since in the FIR itself registered the claimant Jayavel, he is not entitled to claim compensation.

11. Per contra, the learned counsel for the claimant submitted



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that the Tribunal has rightly held that the driver of the third respondent lorry is responsible for the accident and there is no concrete evidence placed on record to dispute the evidence of the PW1 and PW2 and in the absence of any concrete evidence, mere registration of FIR alone is not sufficient to held that the person named in the FIR is responsible for the accident. Hence, the Tribunal rightly has concluded that the driver of the third respondent is responsible for the accident and prays to confirm the award.

12. I have considered the submissions made on both sides and perused the materials available on record.

13. The PW1/ claimant in his evidence has stated that on 26.03.2005 at 9:30 pm, while he was driving the lorry belong to the first respondent from Seelanaickanpatti to Kondalampatti on the left hand side of the road by observing traffic rules and with due care and caution, at the time, a lorry was came in the opposite direction and hit on the lorry of the driver of the third respondent and he sustained injuries. He has also stated that since he was injured severely in the accident, he was not in a



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position to lodge any criminal case. Taking advantage of his physical condition, the driver of the lorry bearing Reg. No. KA-01-C-9955 belongs to the third respondent has lodged a false complaint against him. In the cross examination, he has admitted that FIR was registered against him on the criminal case in Crime No.173/2005 under Sections 279, 337 of IPC and he has paid Rs.3,500/- as fine after pleading guilty. Similarly, in the cross examination of P.W.2, who is also a injured claimant in M.C.O.P.No.24 of 2006 stated that the claimant in M.C.O.P.No37 of 2006 has pleaded guilty and paid the fine.

14. The Division Bench of this Court in *The New India Assurance Co. Ltd. vs. K. Rameshkumar and Ors.* [MANU/TN/2412/2011], while considering the entitlement of the claimant, who has pleaded guilty before the Criminal Court for the negligence committed by him in the accident has observed in paragraph nos. 14 to 21 as follows:

*"14. In the judgment reported in 2004 (2) TN MAC 101 (cited supra), the learned Single Judge relying upon the judgment reported in 1995 2 ML J 317 held that the*



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*confession made by the driver before a Criminal Court should not be solely taken into consideration for deciding the negligence aspect in a Motor Accidents Claims petition.*

*15 . The learned Judge also held that the claimant should prove the negligence by examining independent witnesses. Since the learned Judge relied upon the judgment of the Division Bench of this Court reported in 1995 2 MLJ 317, it is relevant to take into consideration the judgment of the Division Bench. Therefore, it is relevant to extract the portion which is necessary for deciding the proposition which reads as follows:*

*On the evidence on record, it is clear that the accident with respect to which the present petition has been filed by the owner of the van was caused only by the rash and negligent driving of the Appellant's bus. In fact, no reliance can be placed by the Appellant on the admission made by the driver of the van in the criminal proceeding that he was guilty of rash and negligent driving. What he had admitted before the Magistrate was only that first, the van had capsized on account of his rash and negligent driving which would fall under Section 277, I.P.C., even though no third party was involved in that accident. That will not enable the Appellant to contend that the same would bind the owner of the van so as to prevent the owner from claiming compensation for the damage caused to the van by the bus. In fact, the accident by which the van has suffered damage is different and not the same in which the van had capsized.*

*From the above, it could be seen that the petition was filed by the owner of the van alleging that the accident occurred only due to the rash and negligent driving of the bus driver. In the criminal case, the driver of the van pleaded guilty of*



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*rash and negligent driving. However, what he had admitted before the Criminal Court was that the van had capsized only on account of his rash and negligent driving, even though no 3rd party was involved in that accident. Therefore, the owner of the bus cannot contend that the confession made by the driver of the van would bind that owner of the van so as to prevent the owner from claiming compensation for the damage caused to the van by the bus.*

*16. The facts of the above referred case show that two different and distinct accidents had occurred (i.e.,) (i) the van had capsized on account of rash and negligent driving of the van driver and (ii) thereafter the van was hit by the bus and due to that the van suffered damage. Therefore, the accident by which the van had suffered damage is different and not the same in which the van had capsized. The van driver had confessed before the Criminal Court that the van had capsized only on account of his rash and negligent driving. But he did not confess that the bus was not negligent in causing damage to the van.*

*17. In these circumstances, the Division Bench of this Court held that so far as the damage suffered by the van is concerned, the confession made by the van driver before criminal Court cannot be taken into consideration. In the case reported in 1995 (2) ML J317 (referred supra), the appeal was filed by the owner of the bus viz., The Managing Director, Than Thai Periyar Transport Corporation Limited, Villupuram. Therefore, the Division Bench held that the confession made by the van driver before a Criminal Court with regard to the capsizing of the van cannot be relied upon by the Transport Corporation for deciding the issue of negligence. The principle laid by the Division Bench shall apply only to the facts and circumstances of that particular case and it cannot be construed as a general proposition of law laid down by the Division Bench. Proposition*



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**18.** *In the case reported in 2004 (2) TN MAC 101, the learned Single Judge held that in the absence of any independent witness with regard to the negligence, the Tribunal should not solely rely upon the confession made by the driver before a Criminal Court for deciding the negligence. The proposition laid down by the learned Single Judge is completely different from the proposition laid down by the Division Bench reported in 1995 2 MLJ 317 and therefore the view of the learned Single Judge cannot be said to be laying down the correct proposition of law.*

**19.** *In MANU/TN/0150/1975 : 1975 A.C.J. 215 [Govind Singh and Ors. v. A.S. Kailasam and Anr.] this Court held that the driver, after having admitted before the Criminal Court that the accident took place due to his rash and negligent driving, cannot contend in a Motor Accidents Claims petition that he did not drive the car rashly and negligently and he was not to be blamed for the accident. In the said judgment this Court also held that an admission against his interest, made by the driver either before the Tribunal or elsewhere, has got to be taken into consideration in rendering a decision on the relative stands taken by the parties in the controversy.*

**20.** *In the judgment reported in 1998 3 L.W. 521 [The Managing Director, Pandiyan Roadways Corporation, Bye Pass Road, Madurai V.K. Narayanan and Ors.] also this Court held that when once the driver alone had been prosecuted and found guilty, it has to be concluded that the accident occurred only due to the rash and negligent driving of the vehicle by the driver and not otherwise and it is not open to the driver to go back from his admission. Hence, the driver alone is responsible for the accident.*



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*21. In the case on hand, the driver viz., the 2nd Respondent pleaded guilty before the Criminal Court and his confession was relied upon by the Tribunal while fastening the negligence on him. In the above referred judgments, this Court categorically held that the confession made by the Tribunal before a Criminal Court can be relied upon by the Motor Accidents Claims Tribunal while fixing his negligence. In the present case, since the 2nd Respondent/driver that the 2nd Respondent was driving the motorcycle in a rash and negligent manner and was solely responsible for the accident."*

15. In this case, the claimant herein has categorically admitted the charge of negligence act committed by him in the accident for which he claims compensation. He is not entitled to contend in this petition that he did not drove the vehicle rashly and negligently and he was not the cause for the accident. The Tribunal has not considered this aspect and has held and proceeded against the insurance company on the ground that no other witnesses were examined on the side of the respondents. It is true that if no counter evidence was produced against the evidence placed on the side of the petitioners, the probability of the claim shall be taken into account for the purpose of deciding the negligence, since the standard of proof required for the cases relating to compensation is preponderance of probability. However, the evidence of P.W.1 could not be taken into account, since he himself had accepted his negligence



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before the Criminal Court, and also paid fine, as per the sentence imposed on him and he has also not chosen to challenge the conviction.

16. In view of the above, this Court finds that, regarding fixing of negligence against the driver of the third respondent is not sustainable. and the same is liable to be set aside. Accordingly, this Court of the view, the claimant Jayavel is not entitled to claim any amount as compensation for his own negligence act admitted by him. As far as the claimant Kumar is concerned, he has travelled in the lorry driven by the claimant Jayavel and according to him, the vehicle belongs to the third respondent is responsible for the accident but this Court based on the discussion made above has held that the driver of the lorry in which claimant Kumar travelled is responsible for the accident. He has to claim compensation only from the first and second respondent alone. The Tribunal has awarded only meagre sum of Rs.12,130/- as compensation along with interest. The Tribunal has awarded meagre compensation to the claimant and I am not inclined to interfere with the award of the Tribunal and the same is confirmed.



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17. Accordingly, Civil Miscellaneous Appeal No.287 of 2013 is allowed and Civil Miscellaneous Appeal No.286 of 2013 is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

**24.08.2023**

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Index : Yes/No

Neutral Citation : Yes/No



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**K.RAJASEKAR, J.**

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To:

- 1.The Motor Accident Claims Tribunal,  
(Additional District Judge), Dharmapuri.
- 2.The Section Officer,  
VR Section,  
High Court,  
Madras.

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