



C.M.A.No.3850 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3850 of 2019

and

C.M.P.No.22010 of 2019

National Insurance Company Ltd.,
No.751, Anna Salai,
Chennai – 600 002.

... Appellant

Vs.

1. Nagaraj
2. N.Ramesh
3. T.Elumalai
4. The New India Assurance Co. Ltd.,
340, Mint Street, Sowcarpet,
No.21, Dams Road,
Chennai – 600 002.
*R4 impleaded as party respondent vide
Court order dated 20.09.2019 made in
C.M.P.No.3363 of 2019 in
CMA.Sr.No.87146 of 2011.*

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree dated 16.09.2010 and made in M.A.C.T.O.P.No.5402/2004 on the file of the Motor Accident Claims Tribunal, Chennai (VI Court of Small Causes, Chennai).



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For Appellant : Mr.S.Vadivel

For Respondents : Mr.P.T.Saleem Fathima
for R1

M/s.K.S.Mahadevan
for R2

M/s.K.Vinod for R4

JUDGEMENT

The Civil Miscellaneous Appeal filed against the Judgement and Decree dated 16.09.2010 and made in M.A.C.T.O.P.No.5402/2004 on the file of the Motor Accident Claims Tribunal, Chennai (VI Court of Small Causes, Chennai)

2. On 19.04.2001 at about 23:30 hours when the first respondent / claimant was returning his home from Parrys to Vyasarpadi through Auto Rickshaw bearing Reg.No.TN 07 9682 as a passenger, at that time the driver of the auto rickshaw has driven the said vehicle in a rash and dashed against the platform, due to which the first respondent / claimant sustained grievous injuries all over his body. Claiming compensation for a sum of Rs.2,00,000/-, the first respondent / claimant has filed a claim



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petition.

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3. Before the Tribunal, the claimant examined P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.10. The Respondents examined R.W.1 and marked Exs.R1 to R13. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.79,000/- payable by the appellant as compensation to the claimant. Challenging the same, the appellant / insurance company is before this Court.

4. The learned counsel for the appellant submits that as per Ex.R2, the delivery note, it seen that the insurance coverage with the appellant has expired on 02.09.2000, however, prior to the said expiry of the insurance coverage, the second respondent sold the said vehicle to the third respondent on 25.09.1999. Though there was no policy coverage with the appellant on the date of accident which is 19.04.2001, however, the Tribunal fastened the liability as against the appellant which is *per se* unsustainable. More so, the said policy was subsequently, renewed by the second respondent namely Ramesh with the New India Assurance Co.Ltd. covering the period from 03.09.2000 till 02.09.2001. Hence, he



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prayed this Court may direct the fourth respondent to pay the entire compensation to the first respondent / claimant. Accordingly, he prayed for passing appropriate orders.

5. The learned counsel appearing for the second respondent submits that as per Ex.R1 the second respondent had sold the auto rickshaw in favour of the third respondent and he has also counter signed the same. Further the sale of auto rickshaw was also informed to the insurance company and Road Transport Office. Since the second respondent sold the vehicle to the third respondent prior to the said accident, automatically it is deemed that the third respondent is the owner of the vehicle.

6. The learned counsel appearing for the fourth respondent submits that though the claim made by the learned counsel for the appellant that they are not entitled to pay the compensation as the insurance coverage with the appellant expired during the year 2000, which is prior to the date of said accident, however, the appellant has not taken any steps to implead the fourth respondent as necessary party before the Tribunal.



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Since no opportunity has been given to the fourth respondent, he prayed this Court to remand the matter to the Tribunal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and the learned counsel appearing for the fourth respondent and perused the materials placed on record.

8. It is the major contention of the appellant that the insurance coverage with the appellant has expired on 02.09.00, which is prior to the date of accident and in the absence of any policy with the appellant insurance company, fastening the liability on the appellant insurance company is wholly unsustainable. However, this Court perused the policy details which stood in the name of erstwhile owner of the vehicle, wherein the policy was renewed in the name of second respondent with the fourth respondent for the period from 03.09.2000 till 02.09.2001, which is within the date of accident i.e., on 19.04.2001.

9. When there being a policy coverage with the fourth respondent,



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fastening the liability on the appellant is wholly unsustainable. Hence, the award passed by the Tribunal fastening the liability on the appellant dated 16.09.2010 in M.C.O.P.No.5402 of 2004 is set aside. The Civil Miscellaneous Appeal is allowed and the claimant is directed to file appropriate application to implead the necessary party especially the fourth respondent herein before the Tribunal within a period of two (2) weeks from the date of receipt of a copy of this judgement. Upon such implead petition being made by the claimant, the Tribunal is directed to take up the matter afresh after affording opportunity to both the parties and pass appropriate orders within a period of three (3) months thereafter. No costs. Consequently, connected miscellaneous petition is also closed.

12.12.2023

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Index : Yes / No

Speaking order / Non speaking order : Yes / No

Neutral Citation Case : Yes / No

To



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- 1.Motor Accident Claims Tribunal, Chennai (VI Court of Small Causes, Chennai).
- 2.The Section Officer, V.R.Section, High Court, Madras.



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