



C.M.A.No.3156 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3156 of 2019

and

C.M.P.No.17922 of 2019

The Branch Manager,
Royal Sundaram Aliance Insurance Co.Ltd.,
D1 2nd Floor, Amritha Towers,
KPCC Maharaja Grounds, M.G.Road,
Cochin.

... Appellant

Vs.

1. Sibi Alexander
2. Rani Reji

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 14.12.2016 passed in M.C.O.P.No.90 of 2014 on the file of Krishnagiri.

For Appellant : Mr.G.Vasudevan

For Respondents : No appearance [R1 & R2]

JUDGEMENT

The Civil Miscellaneous Appeal filed to set aside the judgment and decree dated 14.12.2016 passed in M.C.O.P.No.90 of 2014 on the file of Krishnagiri.



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2. On 16.03.2007, while the claimant was proceeding in a car bearing Reg.No.KL 35 2988 belonging to the first respondent from Bangalore to Kollam, a tempo driven by its driver which was moving in front of the car driven by the petitioner applied sudden brake in the middle of the road, due to which the claimant also applied sudden brake to avoid hitting the vehicle in front, which resulted in the vehicle getting capsized on a road side pit which resulted in the claimant sustaining grievous injuries. Claiming compensation in a sum of Rs.5,00,000/- the petitioner has filed the claim petition.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined P.W.2 Doctor and marked Exs.P.1 to Ex.P.14. The respondents examined R.W.1 and R.W.2 and marked Ex.R1 and R2. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.2,31,000/- as compensation to the claimant. Aggrieved over the same, the appellant/insurance company is before this Court.



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4. The learned counsel for the appellant / insurance company submits admittedly the F.I.R. has been registered against the first respondent / claimant and he has also paid a fine amount to that effect. Though the F.I.R. has been registered against the first respondent, however, the first respondent has not chosen to dis-prove the contents in the said F.I.R. Moreso, in order to prove the negligence R.W.2. Head Constable of KRP Police Station was examined and he deposed that due to the rash and negligent driving of driver of the car / claimant, the said accident happened. Hence, the appellant / insurance company is not liable to pay the compensation.

5. Though notice was served on the respondents 1 and 2, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

6. Heard the learned counsel appearing for the appellant and perused the materials placed on record.



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7. Admittedly, the F.I.R. has been registered against the claimant.

When there being a F.I.R. registered against the claimant, he has not taken any steps to disprove the contents in the F.I.R. Though the claimant was examined as P.W.1 before the Tribunal, he miserably failed to prove that the alleged accident which happened was not due to his fault. In the absence of any oral and documentary evidence, the claims Tribunal has awarded a sum of Rs.2,31,000/- as compensation to be payable by the insurance company of the car driven by the claimant which is *per se* unsustainable. Though the claimant being the driver of the vehicle steps into the shoes of the owner however, he has neither impleaded the owner nor the insurance company of the alleged tempo in the claim petition. When the whole accident has happened due to the fault of the claimant, fastening the liability on the insurance company/appellant herein to pay the compensation, is not sustainable, moreso when the owner of the tempo and insurer of the tempo have not been arrayed as party respondents in the claim petition.

8. It is stated in the claim petition that due to the rash and negligent



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driving of the driver of the tempo, the alleged accident had happened.

When such a stand is taken and the rashness is attributed to the offending vehicle as stated by the claimant, without impleading the insurance company of the offending vehicle or the owner of the offending vehicle, the claim petition against the appellant, who is the insurer of the car driven by the claimant cannot be made liable to pay the compensation and the claim petition itself is not maintainable for want of necessary parties. Therefore, the judgment and decree passed in claim petition in M.C.O.P.No.90 of 2014 deserves to be set aside.

9. This Civil Miscellaneous Appeal is allowed by setting aside the impugned judgment and decree passed by the Tribunal. The compensation, if any, deposited by the appellant shall be withdrawn by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

1. Motor Vehicles Claims Tribunal, Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.

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