



C.M.A(MD)No.1361 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.08.2023

Delivered on : 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1361 of 2010

and

C.M.P.(MD)No.1 of 2010

The Branch Manager,
United India Insurance Company Limited,
Kovilpatti.

: Appellant/3rd Respondent

Vs.

1.M/s.Jai Renga Transport, Rajapalayam,
through its partner J.K.Ravichandra Raja,
through his power agent J.Peter.

: 1st Respondent/Petitioner

2.Mohan

: 2nd Respondent/1st Respondent

3.M/s.Thiruppathi Venkatachalapathy : 3rd Respondent/2nd Respondent

4.The Branch Manager,

: 4th Respondent/4th Respondent

Oriental Insurance Company Limited,
Rajapalayam.

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 23.06.2006 made in



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M.C.O.P.No.142 of 2003 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Srivilliputtur.

For Appellant : Mr.N.Murugesan

For Respondents : Mr.M.Jothi Basu, for R1.

: No Appearance, for R2 to R4.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.142 of 2003 dated 23.06.2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Srivilliputtur.

2. The appellant/insurer, who was made liable to pay compensation of Rs.79,607/- with interest at 7.5% per annum to the first respondent/claimant for the damages caused to their lorry, consequent to an accident occurred on 30.07.1997, challenged the liability mulcted on it.

3. For the sake of convenience and brevity, the parties herein after will be referred as per their status/ranking in the Tribunal.

4. It is not in dispute that the claimant is a partnership firm and the lorry bearing Registration No.TN-67-Z-2805, involved in the accident was



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owned by them and the same was insured with the fourth respondent.

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4. The case of the claimant is that on 30.07.1997 at about 06.30 hours near Nagampatti Villakku in Dindigul-Vedasanthur Road, the petitioner's lorry was driven by its driver on the left side of the said road and at that time, the vehicle bearing Reg.No.TN-04-D-1177, belonging to the second respondent came in the opposite direction in a very high speed; that the petitioner's lorry driver on noticing the rash and negligent driving of the lorry, has stopped his vehicle, but eventhen, the second respondent's lorry, which came in a rash and negligent manner, dashed against the front side of the petitioner's lorry and caused heavy damages to the petitioner's lorry and that the accident was occurred only due to the rash and negligent driving of the first respondent's driver.

5. It is the further case of the claimant that the damaged lorry was entrusted with M/s.T.V.Sundaram Iyengar and sons Limited, Madurai, that they have estimated the costs of damages to the tune of Rs.1,73,740/- and issued a letter of estimate on 04.08.1997; that after completing the repair work, they have sent a bill to the tune of Rs.1,65,405/-; that the fourth respondent with whom the petitioner's lorry was insured with, has partly



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settled the damages at Rs.79,607/- and that therefore, the claimant is entitled to get the remaining amount with interest and costs.

6. The defence of the third respondent is that the accident was occurred only due to the rash and negligent driving of the petitioner's vehicle driver and as such, there is no cause of action against the respondents 1 to 3; that the petitioner's vehicle is of very old model and therefore, the concocted story that nearly Rs.1,65,405/- was spent for repairing, the same is meaningless and unsustainable; that the petitioner has already received Rs.79,607/- from the fourth respondent as full quit, without even reserving his right to claim the remaining amount from the third respondent and that therefore, the petitioner has no *locus standi* to make the above claim.

7. It is pertinent to note that the petitioner's vehicle driver one V.Gururaj, has laid a claim petition in M.C.O.P.No.180 of 1998, claiming compensation for the injuries suffered by him in the accident occurred on 30.07.1997 against the appellant and other respondents and that after enquiry, the Motor Accident Claims Tribunal/Subordinate Court, Srivilliputhur, has passed the award, dated 15.12.2000, holding that the



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second respondent's lorry driver was responsible for the accident and directed the appellant/3rd respondent to pay compensation of Rs.57,000/- with interest and costs.

8. It is not the case of the third respondent that they have preferred any appeal, challenged the award passed in M.C.O.P.No.180 of 1998 and as such, the said award has attained finality.

9. The Tribunal, by taking note of the judgment passed in M.C.O.P.No.180 of 1998 under Ex.P.9, FIR, Charge Sheet and Motor Vehicle Inspectionr Report, Rough Sketch and other records produced, has rightly come to a decision that the accident was occurred only due to the rash and negligent driving of the second respondent.

10. It is the specific case of the claimant that they have entrusted their vehicle with M/s.T.V.Sundaram Iyengar and sons Limited, Madurai, who in turn, sent an estimation to the tune of Rs.1,73,740/-; that after completing the repair work, they have sent a bill to the tune of Rs.1,65,405/-; that the fourth respondent/insurer has paid a sum of Rs. 85,798/- under Ex.P.12 and the receipt from T.V.S Company to the



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claimant for remaining amount of Rs.79,607/- under Ex.P.13 and that therefore, the fourth respondent is liable to pay remaining amount of Rs.79,607/-, which was already paid by the petitioner to the workshop.

11. According to the third respondent/insurer, the fourth respondent had fairly settled the claim of the petitioner, only after verification of all relevant records and on the basis of the report submitted by the surveyor and that the petitioner has received the said amount from the fourth respondent as full quit, without reserving his right to claim the balance amount.

12. It is evident from the records that the M/s.T.V.Sundaram Iyengar and sons Limited, Madurai, has sent a bill for Rs.1,65,405/- and out of the said amount, the fourth respondent has paid Rs.85,798/- and the first respondent/claimant has paid the balance amount of Rs.79,607/- to the workshop.

13. The learned counsel for the claimant would contend that though no such reservation was made, even then, since the petitioner has already paid the balance amount, he is certainly entitled to recover the same. At



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this juncture, it is necessary to refer the judgment of Hon'ble Division Bench of this Court in ***M/s.Vijay Hemant Finance and Estate Limited and another, Chennai, Vs. K.Ponni and others*** in C.M.ANo.1152 of 1996, dated 24.11.2003, relied on by the learned counsel for the appellant, wherein, in a similar situation, the Division Bench of this Court has held that in the absence of any evidence to show that the first respondent has reserved right to claim amount again the second respondent over and above the amount of Rs.1,05,000/- granted by the third respondent, the Tribunal is not correct in awarding the amount of Rs.2,06,013.90/- at the first instance and the relevant passages is extracted hereunder :

“ 3. In the claim petition, the first respondent/claimant has specifically stated that she had received a sum of Rs. 1,05,000/- from the 3rd respondent. But, it is stated that the above said amount was received without prejudice to her further claim. But that is not supported by any evidence. In the evidence of PW1 she came forward with the 3rd Respondent Insurance Company a sum of Rs.1,05,000/- was made. No where it is stated that the said amount is only part of the claim and right has been reserved to claim more amount. The Tribunal has not at all considered the said aspect though it has found that the first respondent has received a sum of Rs. 1,05,000/- as compensation from the 3rd Respondent When the first Respondent has received the compensation on the basis of the survey report towards damage



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to the vehicle. The Tribunal is not correct in awarding compensation against the second appellant also. It amounts to claiming double compensation. In the absence of any evidence to show that the first respondent has reserved right to claim amount against the second appellant. Over and above the amount of Rs.1,05,000/- granted by 3rd respondent, the Tribunal is not correct in awarding the amount of Rs.2,06,013.90/- to the first respondent. Hence, the award is set aside. The appeal is allowed. No costs.”

14. The above decision is squarely applicable to the case on hand. As already pointed out, the claimant has not stated that without prejudice to his right to claim the balance amount, he has been receiving the amount from his insurer. Since the claimant has not reserved his right to claim the balance amount, the same has to be considered that he has received the amount as full quit.

15. The Tribunal, without considering the above aspects in proper perspective, has mechanically granted compensation and as such, the same is liable to be interfered with. Consequently, this Court concludes that the impugned award granting compensation of Rs.79,607/- to the claimant by the appellant/third respondent is liable to be set aside. Considering the



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other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs.

16. In the result, the Civil Miscellaneous Appeal is allowed and the impugned award M.C.O.P.No.142 of 2003, dated 23.06.2006 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Srivilliputtur, is set aside. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

01.09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
das

To

- 1.The Motor Accident Claims Tribunal
(Subordinate Judge) at Srivilliputtur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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