



C.M.A(MD)No.1410 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1410 of 2013

New India Assurance Company Ltd.,
Attringal,
Represented by its Branch Manager,
Nagercoil, Balamore Road,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/3rd Respondent

Vs.

1.Celestin

... Respondent/Petitioner

2.Sudhamani

3.P.Prasath

4.Prosecutor,
Diocese of Marthandam,
Bishop House, Marthandam-629 165,
Kanyakumari District.

5.United India Insurance Co., Ltd.,
Represented by its Branch Manager,
Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents 1,2,4&5



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, to set aside the judgment and decree passed by the I Additional Motor Accident Claims Tribunal, I Additional Sub Court, Nagercoil in M.C.O.P.No.51 of 2005 dated 26.09.2012.

For Appellant : Mr.D.Sivaraman

For R1 : Mr.S.Vashikali
for Mr.R.Murugan

For R2-R4 : No Appearance

JUDGEMENT

The present appeal has been filed by the insurance company challenging an award passed by the Motor Accident Claims Tribunal in M.C.O.P.No.51 of 2005 on the file of the I Additional Motor Accident Claims Tribunal, Nagercoil.

2. The claimant is the injured person. According to the claimant, he was driving a jeep from Marthandam to Sengottai in Tirunelveli District. At about 10 a.m., when they were travelling towards Nagercoil, a lorry which was coming behind the jeep came and hit against the rear side of the jeep in a rash and negligent manner. Therefore, the driver of the jeep lost his control and hit against a bus belonging to the transport



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corporation and it was pulled to the left side of the road. At that point of time, the lorry belonging to the 1st respondent driven by the 2nd respondent in the claim petition attempted to overtake the bus and hit against the jeep, in which the claimant got injured. The claim petition was filed seeking a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) towards compensation.

3. The respondents 1 and 2 in the claim petition remained ex parte. The 3rd respondent who is the insurer of the lorry had filed a counter contending that only the driver of the jeep had driven the vehicle in a rash and negligent manner and dashed against the bus belonging to the transport corporation. They have further contended that the claimant had not noticed the lorry, which was coming from behind the bus. They have further contended that the jeep was dashed from the rear side by an unknown lorry and the police authorities have not properly investigated the matter and registered an F.I.R. The company has also challenged the quantum of compensation sought for by the claimant.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that only the lorry driver was negligent and



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only due to rash and negligence driving of the lorry, which was attempting to overtake the bus from the opposite direction, this accident has happened.

5. The tribunal has notionally fixed the monthly income at Rs. 7,500/- (Rupees Seven Thousand and Five Hundred only) and arrived at a total compensation of Rs.4,94,000/- (Rupees Four Lakh Ninety Four Thousand only) to be paid by the insurance company. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, the tribunal in Paragraph No.10 of the award has arrived at a categorical finding that the lorry was not having permit to run inside the State of Tamil Nadu on the date of accident and therefore, that is a clear case of permit violation. He further contended that the owner of the lorry which hit behind the jeep should have been made as a party so as to fix the negligence and liability upon the owner of the said lorry and the respective insurance company. Only because of the dashing of the said lorry on the rear side of the jeep, this accident had happened. Therefore, the entire negligence is upon the said unknown lorry. For reasons best



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known, the claimants have not impleaded the said lorry owner or identified the said lorry.

7. The learned counsel appearing for the appellant had further contended that now the lorry which has been meted with the liability was being operated behind the bus in the opposite direction. Therefore, without fixing any liability upon the bus, which was directly coming from the opposite direction, the present award has been passed as against the lorry. Therefore, he prayed for setting aside the award and exonerate the insurance company.

8. Per contra, the learned counsel appearing for the claimant brought to the notice of the Court that co-passengers of the jeep had filed M.C.O.P.No.15 of 2005 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Nagercoil. In the said claim petition, liability was fixed only upon the lorry and the present appellant insurance company. This award was challenged by the insurance company in C.M.A(MD)No.1147 of 2011. This Court was pleased to dismiss the said C.M.A on 24.11.2017 with a finding that the driver of the lorry alone was negligent and only due to the rash and negligent



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driving of the lorry driver, this accident has happened. The insurance company also was not exonerated and the liability was confirmed by this Court. Therefore, according to the learned counsel for the respondent/claimant, one C.M.A arising out of the same accident has already been dismissed and this Court may not take a different view in the present appeal.

9. I have carefully considered the submissions made on either side.

10. It could be seen from the order in C.M.A(MD)No.1147 of 2011 in Paragraph No.11, this Court has arrived at a categorical finding that the lorry coming from the opposite direction was alone responsible for the accident and the insurance company is liable to pay the said amount. The issue relating to violation of permit conditions was not raised in the said appeal.

11. As far as the quantum is concerned, the tribunal has taken a moderate amount of only Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) for a pastor and considering the permanent disability of 45%, it has ultimately awarded a total sum of Rs.4,94,000/- (Rupees Four Lakh Ninety Four Thousand only), which this Court does not find



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unreasonable or exorbitant.

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12. Therefore, in view of the liability fixed upon the insurance company in the previous appeal and the reasonable award, this Court is not inclined to interfere in the quantum of award. Hence, this appeal lacks of merits.

13. Therefore, this Civil Miscellaneous Appeal stands dismissed.

No costs.

13.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. I Additional Motor Accident Claims Tribunal/
I Additional Sub Court,
Nagercoil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.M.A(MD)No.1410 of 2013

13.03.2023