BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1243 of 2016
and
C.M.P(MD)No.10709 of 2016

A.Mohana Chandran ....Appellant/3rd Respondent

Vs.

1.S.Peer Mohammed (Died)

2.Sithika Beevi ...Respondents/Claimants

3.P.K.Sivakumar

4.J.Mohan

5.Balachandran Asokan

6.M/s.United India Insurance Company Ltd.,
Represented by its Branch manager,
Xavier Building, 2nd Floor,
P.W.D.Road, Nagercoil,
Nagercoil Village, Agastheeswaram Taluk,
Kanyakumari District.

7.M/s.National Insurance Company Ltd.,
Represented by its Branch Manager,
Anguvilas Building, North Car Street,
Nagercoil-1, Nagercoil Village,
Agastheeswaram Taluk, Kanyakumari District.

8.M/s.Oriental Insurance Company Ltd.,
Represented by Branch Manager,
1st Floor, D.D.J.Center,
Opp. Vadasery Bus Stand,
Nagercoil, Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to the fair order and decreetal order passed by the learned Motor Accident Claims Tribunal cum District Judge, Kanyakumari at Nagercoil in M.C.O.P.No. 223 of 2007, dated 21.08.2012 and set aside the same in so far as the appellant/3rd respondent herein is concerned.

For Appellant	: Mr.F.X.Eugene
For R2	: Mr.M.P.Senthil
For R3-R5	: No Appearance
For R6	: Mr.I.Suthakaran
For R7	: Mr.J.S.Murali
For R8	: Mr.C.Jawahar Ravindran

JUDGMENT

The present appeal has been filed by the 3rd respondent in M.C.O.P.No.223 of 2007 on the file of Motor Accident Claims Tribunal, Nagercoil challenging the award on the ground of liability.

2. The parties will be referred to as per their array before the tribunal. A load auto owned by the 3rd respondent in the claim petition was under repair and it was towed by a jeep belonging to the 1st respondent. The said jeep was driven by the 2nd respondent. The jeep was insured with the 5th respondent. The said defunct load auto was driven by the 4th respondent and the said load auto was insured with the 6th respondent.

3. When the vehicle was being towed by way of a rope, the deceased namely one Syed Ali who was driving a motor bike had hit against the said rope, fell down and succumbed to the said injuries. The motor bike of the deceased was insured with the 7th respondent. The parents, as claimants had filed the claim petition seeking a compensation

of a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) from all the respondents.

4. The 5th respondent insurance company of the jeep had filed a counter contending that there is no negligence on the part of the jeep driver and the accident has happened only due to the negligence on the part of the load auto driver. They have further contended that the jeep cannot be used for the purpose of towing a vehicle, which is clearly a violation of the policy condition. Therefore, they have prayed for exonerating themselves. A counter was filed by the 7th respondent insurance company which is the insurer of the motor bike, in which the deceased had travelled. The 7th respondent had taken a stand that the offending vehicle were the load auto and the jeep and therefore, they are not liable to pay any compensation.

5. The 6th defendant, namely the insurance company of the load auto had filed a counter that the load auto was a defunct vehicle and it

was towed by another vehicle, namely the jeep. Therefore, the question of attributing negligence on the part of a defunct vehicle does not arise. When there was no negligence on the part of the load auto driver, the owner cannot be held liable for payment of compensation and hence, the 6th respondent insurance company is not statutorily bound to indemnifying the load auto owner.

6. The tribunal after considering the submissions made by all the parties, had arrived at a finding that both the jeep and the load auto are responsible for the said accident and imposed the liability upon the respondents 1 to 5 for payment of compensation of a sum of Rs.4,41,000/- (Rupees Four lakh and Forty Thousand only). This award is under challenge by the 3rd respondent in the claim petition, who is the owner of the load auto.

7. According to the learned counsel appearing for the appellant, the load auto was under repair and the engine was not in an operating position. Therefore, the vehicle under repair was towed by another vehicle, namely the jeep. In such view of the matter, the driver of the

load auto cannot be attributed with any negligence whatsoever. The driver of the load auto did not have any control over the direction of the vehicle. Therefore, there is no question of rash and negligence on the part of the load auto driver. In view of the above said facts, the tribunal was in error in fixing the liability upon the owner of the load auto. Therefore, he prayed for allowing the appeal and exonerating himself from the liability.

8. Per contra, the learned counsel appearing for the 5^{th} respondent insurance company had contended that the load auto should be held responsible for the said accident and the jeep cannot be held responsible for the said accident. Therefore, he prayed that the appellant cannot be exonerated and he should be held liable for the accident.

9. The learned counsel appearing for the claimants had contended that the tribunal had erroneously taken the age of the claimants for the purpose of arriving at the multiplier without considering the age of the deceased. Therefore, he prayed for enhancement of the compensation in the appeal filed by the owner of the vehicle.

10. I have carefully considered the submissions made by all the parties.

11. There is no dispute with regard to the manner of accident. Admittedly, a load auto under repair was towed by a jeep. Therefore, it is clear that the engine of the load auto was not in an operating condition and the driver of the said load auto will not have any control over the speed or direction of the said load auto, which is being towed by the jeep. Therefore, viewed from any angle, negligence cannot be attributed to the driver of the load auto which was being towed by the jeep. Therefore, I find that the contention of the appellant/3rd respondent in the claim petition is legally sustainable and the owner of the load auto cannot be held liable for payment of compensation.

12. As far as the plea of enhancement of compensation by the claimants are concerned, the claimants are the parents and out of them, the father has already passed away. Therefore, at this length of time, in the appeal filed by the owner of the load auto, this Court will not in a

position to enhance the compensation. Only if an appeal had been filed by the jeep owner or the insurance company of the jeep, which are held to be responsible for the accident, the question of considering the enhancement of compensation in favour of the claimants would arise. Therefore, the request of the learned counsel appearing for the claimants as respondents is not legally sustainable.

13. In view of the above said facts, the award of the tribunal is modified to the effect that the 3rd respondent in the claim petition/appellant in the present appeal is exonerated and the award passed against him by the tribunal is hereby set aside. In other respects, the award of the tribunal stands confirmed.

14. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.03.2023

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

1.The Motor Accident Claims Tribunal
cum District Judge,
Nagercoil,
Kanyakumari District.

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

R.VIJAYAKUMAR,J.

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Judgement made in
C.M.A(MD)No.1243 of 2016

15.03.2023