



C.M.A(MD)Nos.680 & 681 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.680 & 681 of 2015

C.M.A(MD)No.680 of 2015:

K.Subramanian Chettiyar

... Appellant/Petitioner

Vs.

1.Beer Mohamed

2.The Royal Sundaram Alliance Insurance
Company Ltd.,
Represented by its Branch Manager,
Sundaram Towers,
White Road,
Chennai-14.

3.The Oriental Insurance Company Ltd.,
Represented by its Divisional Manager,
No.2, St.Mary Villa, Ulloor,
Thiruvananthapuram.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decretal order, dated 24.09.2012 passed in M.C.O.P.No.43 of 2007 on the file of the Motor Accident Claims Tribunal, Kuzhithurai.



C.M.A(MD)Nos.680 & 681 of 2015

C.M.A(MD)No.681 of 2015:

S.Arun @ Arunkumar

... Appellant/Petitioner

Vs.

1.Beer Mohamed

2.The Royal Sundaram Alliance Insurance
Company Ltd.,
Represented by its Branch Manager,
Sundaram Towers,
White Road,
Chennai-14.

3.The Oriental Insurance Company Ltd.,
Represented by its Divisional Manager,
No.2, St.Mary Villa, Ulloor,
Thiruvananthapuram.

4.K.Subramanian Chettiyar

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For Appellant : Mr.S.Rajasekar
(In both cases)

For R2 : Mr.M.Jerin Mathew
(In both cases)

For R3 : Mr.C.Karthik
(In both cases)



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JUDGMENT

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The appeals have been filed by the claimants challenging the dismissal of their claim petitions in M.C.O.P.Nos.43 and 44 of 2007 on the file of Motor Accident Claims Tribunal, Kuzhithurai.

2. The claimant in M.C.O.P.No.43 of 2007 was riding a two wheeler and the claimant in M.C.O.P.No.44 of 2007 was a pillion rider in the said two wheeler. According to the claimants, they were travelling in the two wheeler on 09.06.2006 at about 3.45 p.m, an Ambassador car owned by the 1st respondent and insured with the 2nd respondent came from the opposite direction in a rash and negligent manner and dashed against the two wheeler. In the said accident, both the claimants have sustained injuries. Hence, they have filed two independent claim petitions seeking compensation.

3. The owner of the Ambassador car had remained ex parte and the insurance company of the Ambassador car and the insurance company of the two wheeler in which the injured claimants have travelled have filed their counters. The insurance company of the Ambassador car had



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contended that the accident has happened only due to the rash and negligent driving on the part of the claimant in M.C.O.P.No.43 of 2007 against whom an F.I.R has been registered for his rash and negligent driving. Therefore, there is no negligence or rashness on the part of the driver of the Ambassador car. Hence, they are not liable to pay any compensation. The insurance company of the two wheeler in which the injured claimants have travelled have filed a counter contending that the accident has taken place only due to the negligence on the part of the driver of the Ambassador car and therefore, they are not liable to pay any compensation.

4. The tribunal after considering the oral and documentary evidence, arrived at a finding that criminal proceedings are pending before the High Court relating to the registration of F.I.R and therefore, dismissed the claim petitions citing the pendency of those criminal proceedings. Challenging the said order, the present appeals have been filed by the claimants.

5. According to the learned counsel appearing for the appellants, immediately after the accident, the owner of the Ambassador car had



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lodge a police complaint as against the claimant in M.C.O.P.No.43 of 2007 and an F.I.R was registered as against him in Crime No.311 of 2006 on 09.06.2006 alleging that the claimant in M.C.O.P.No.43 of 2007 has driven the vehicle in a rash and negligent manner and dashed against the Ambassador car. According to the learned counsel appearing for the appellants, they have also lodge a counter complaint as against the owner of the Ambassador car. Since the said complaint was not registered, the claimant in M.C.O.P.No.44 of 2007 had filed CrI.O.P(MD)No.252 of 2007 before the High Court for reinvestigation of the case in Crime No.311 of 2006. This CrI.O.P(MD)No.252 of 2007 has been disposed of by this Court on 15.03.2007 with a direction to the police officials to give suitable reply to the petitioner. In case, if the petitioner is not satisfied with the said reply, it is open to him to file a private complaint or approach the learned Judicial Magistrate I, Kuzhithurai for further investigation. However, the said order of this Court, dated 15.03.2007 was not brought to the notice of the tribunal and the tribunal has relied upon the pendency of CrI.O.P(MD)No.252 of 2007 to dismiss the claim petition itself. Hence, he prayed for allowing the appeal and remitted the matter back to the tribunal. He further contended that the claimant in M.C.O.P.No.43 of 2007 was later



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acquitted by the criminal Court.

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6. Per contra, the learned counsel appearing for the 2nd respondent insurance company had contended that due to the pendency of the criminal proceedings, the tribunal was right in rejecting the claim petitions.

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

8. It is settled position of law that the decision of the criminal Courts are not binding upon the civil Courts or the Motor Accident Claims Tribunal. They have to decide the claim petition based upon the oral and documentary evidence that are let in before the said tribunal. In the present case, F.I.R has been lodged as against the claimant in M.C.O.P.No.43 of 2007 and the claimants have also lodged the counter complaint as against the owner of the Ambassador car. Since the police authorities has not registered a criminal case, the claimant in M.C.O.P.No.44 of 2007 has filed CrI.O.P(MD)No.252 of 2007 and the said petition has been disposed of by this Court on 15.03.2007 itself. However, citing the pendency of the said CrI.O.P, the tribunal has



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dismissed the claim petitions in the year 2012. According to the learned counsel appearing for the claimants, the claimant in M.C.O.P.No.43 of 2007 has been acquitted in the said criminal proceedings. Therefore, there is no impediment whatsoever for the tribunal to consider both the claim petitions on merits and in accordance with law. The claimants have filed Exhibit A.27 which is the judgment of the criminal Court, dated 13.04.2010 under which the claimant in M.C.O.P.No.43 of 2007 has been acquitted. It is not known how the tribunal had overlooked the said document and has dismissed the claim petitions on the ground some proceedings are pending before criminal Court.

9. In view of the above said deliberations, the order of the tribunal in both the appeals are set aside. The appeals are allowed and the matter is remitted back to the file of the tribunal for fresh consideration on merits and in accordance with law. The claimants as well as the respondents in the claim petitions are entitled to let in further oral and documentary evidence. The claim petitions shall be disposed of on or before 31.10.2023. Both the parties are directed to cooperate for the expeditious disposal of the claim petitions.



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10. With the above said observations, both the Civil Miscellaneous

Appeals stand allowed. No costs.

21.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal,
Kuzhithurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)Nos.680 & 681 of 2015

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