



C.M.A(MD)No.1049 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	12.12.2023
Pronounced on	22.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.1049 of 2021
and
C.M.P.(MD)No.9995 of 2021 & 11756 of 2023

M/s.The Oriental Insurance Company Limited,
Rep. Through its Branch manager,
Office at Madikkal Galaxy,
Near M.S.M.College,
Kayangulam,
Kerala State.

... Appellant

-VS-

1.Pradeepkumar
2.Narayana Nair
3.Usha

... Respondents

PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accident Claims Tribunal cum Principal Sub Court, Tenkasi, made in MCOP No.357 of 2014 dated 22.07.2021 and allow the appeal.



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For Appellant : Mr.L.Jawahar Ravindran
For Respondents : Mr.M.S.Suresh Kumar (R1)
Exparte (R2)
Mr.B.Fazil Kirmani (R3)
Legal Aid Counsel

JUDGMENT

(Judgment of the Court was made by **RMT.TEEKAA RAMAN, J.**)

The insurance company is the appellant herein challenging the award on the ground that the alleged vehicle is not involved in the accident and also the medical records produced before the Court by the claimant do not support the case of the first respondent / claim petitioner.

2. The first respondent herein, who is the claim petitioner filed the above claim petition in MCOP No.357 of 2014 claiming compensation for the alleged injury in the alleged accident on 13.09.2012. The appellant insurance company filed a counter statement before the tribunal and has taken a plea that there is no involvement of the vehicle in the accident. The second respondent, who is a pillion rider remained exparte before the tribunal. The third respondent is the owner of the vehicle.



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3. Heard the learned counsel appearing for the appellant and the learned counsel for the first and third respondents.

4. Before the tribunal, it is seen that the first respondent / claim petitioner was examined himself as P.W.1 and Ex.P1 to Ex.P13 were marked on the side of the first respondent / claim petitioner. On the side of the appellant insurance company, R.W.1 to R.W.4 were examined and Ex.R1 and Ex.R2 were marked.

5. Considering the order we propose to pass in the penultimate paragraph, we are not inclined to go into the merits of the claim made by the parties, except to show that the involvement of the vehicle has not been disclosed in the claim petition or in the judgment. Furthermore, no one is known in connection with the treatment said to have been taken by the first respondent / claim petitioner in Amrita Institute of Medical Sciences and Research Centre, Kerala, Ex.P.11 and we are not expressing any opinion on the same.



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6. Hence, we find that there is some deficiency in conducting the trial and without expressing any opinion on the merits of the claim petition and of the counter statement given by the insurance company, we thought it fit to remand this matter for fresh trial by filing additional documents by either of the parties to show the involvement of the vehicle in the alleged accident taken place on 13.09.2012 and the alleged injury in the said accident.

7. Accordingly, the award passed by the learned Principal Sub Judge, Tenkasi. Dated 22.07.2021 is set aside. It is made clear that the award amount alone is set aside. The matter is remanded back to the file of the learned Principal Sub Judge, Tenkasi. Both oral and documentary evidence already adduced shall be kept intact. If any further evidence is necessary, both the parties namely the first respondent / claim petitioner and the appellant insurance company are at liberty to advance any further evidence. Thereafter, the learned Principal Sub Judge, Tenkasi shall consider the evidence on record and pass orders keeping in mind the law laid down by the Hon'ble Supreme Court for the involvement of the vehicle, non-involvement of the vehicle and the injury being caused and the computation of compensation therefor.



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8. In the result, this civil miscellaneous appeal is partly allowed. The learned Principal Sub Judge, Tenkasi. is directed to dispose of MCOP No.357 of 2014 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [P.B.B., J.]

22.12.2023

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

1. The Principal Sub Court, Tenkasi.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.
and
P.B.BALAJI, J.

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Pre-delivery Judgment made in
C.M.A(MD)No.1049 of 2021

Dated:
22.12.2023