



C.M.A.(MD)No.687 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.687 of 2022

Parthasarathy

...Appellant / Claimant

Vs.

1.The Branch Manager,
ICICI Lombard General Insurance Company,
at 2nd and 3rd Floor, Chotabhai Center,
14, Nungambakkam High Road,
Chennai-34.

2.Charles

3.Sadasivam

... Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment dated 28.08.2019 passed in M.C.O.P.No.81 of 2015 on the file of the Motor Accident Claims Tribunal (Sub Judge), Sivakasi, Virudhunagar District.

For Appellant : Mr.C.Suresh Kannan

For R1 : Mr.P.Pethu Rajesh



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JUDGMENT

The present Civil Miscellaneous Appeal is filed, challenging the judgment of the Motor Accident Claims Tribunal (Sub Judge), Sivakasi, Virudhunagar District in M.C.O.P.No.81 of 2015, dated 28.08.2019, dismissing the claim petition filed by the appellant.

2.It is the case of the appellant / claimant that on 04.11.2013, when the driver of the petitioner / 3rd respondent drew the car bearing Registration No.TN-67-AJ-7119 from Chennai to Trichy, an omni bus proceeding in front of the car without any indication stopped the vehicle. Hence, the driver of the car / 3rd respondent in order to avoid the accident applied break. However, the car hit the bus lightly. Due to which, the car of the petitioner as well as the bus of the State Corporation was damaged and two passengers travelling in the bus and the driver of the car / 3rd respondent sustained injuries. Hence, claiming compensation for the damages to the car, the claim petition was filed.

3.Before the Tribunal, on the side of the claimant, he himself was examined as P.W.1 and Ex.P.1 to Ex.P.8 were marked. On the side of the



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respondents, one Sathish Kumar, Law Officer of the 1st respondent Insurance Company was examined as R.W.1 and Ex.R.1 and Ex.R.2 were marked.

4.The trial Court, after considering the oral and documentary evidence adduced by both sides, had dismissed the claim petition mainly on the ground that the claim made by the petitioner before the Insurance Company seeking for damages has already been repudiated and since the car of the claimant was insured with the Insurance Company at the time of accident, he cannot claim compensation as a third party to his own vehicle. Challenging the same, the present Civil Miscellaneous Appeal has been filed.

5.Heard the learned counsel on either side and perused the materials available on record carefully.

6.It is an undisputed fact that the claim of the petitioner, claiming damages to the vehicle, had already been rejected by the Insurance Company on the ground that the driver of the car / 3rd respondent was influenced by alcohol. When the claim itself had already been rejected by the 1st respondent / Insurance Company, this Court is of the view that the owner of the vehicle can never be



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termed to be a third party and he is the insured. Therefore, the remedy of the petitioner is only to challenge the repudiation either before the Consumer Forum or before the Civil Court concerned.

7.Such view of the matter, I do not find any merits in this appeal. Therefore, this appeal is dismissed with liberty to the appellant to challenge the repudiation either before the Consumer Forum or before the Civil Court concerned.

8.Considering the fact that he was *bona fidely* pursuing his remedy before the Motor Vehicle Claims Tribunal and before this Court, the period that has been spent in different forum *bona fidely* is excluded for the purpose of reckoning limitation. In the event of the appellant is able to succeed, the interest for the interregnum period, in which he was pursuing the remedy before two different forum, may be waived. No costs.

05.04.2023

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

1.The Motor Accident Claims Tribunal /
Sub Judge, Sivakasi, Virudhunagar.

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



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N.SATHISH KUMAR, J.

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