



C.M.A(MD)No.29 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2023

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.29 of 2017

and

C.M.P(MD)No.281 of 2017

The Branch Manager,
Oriental Insurance Company Limited,
Door No.II 8 Esplanade, 4th Floor,
Chennai-600 108.

... Appellant/3rd Respondent

Vs.

1.Sathish Kumar

... Respondent/Claimant

2.The Managing Director,
T.N.S.T.C. (Kumbakonam) Ltd.,
Railway Station New Road,
Kumbakonam – 612 001.

3.M/s.Chettinad Logistic (P) Ltd.,
Rani Seethai Hall, 8th Floor,
603, Anna Salai,
Chennai.

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the order of the tribunal of MACT cum District Judge, Karur made in M.C.O.P.No.402 of 2009, dated 15.12.2011.



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For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.N.Sudhagar Nagaraj
For R2 : Mr.D.Sivaraman
For R3 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Karur in M.C.O.P.No.402 of 2009.

2. According to the injured claimant, he was a passenger in the bus belonging to the transport corporation. While he was travelling in the said bus at about 4.30 p.m on 24.05.2009, the bus was driven in a rash and negligent manner and it dashed against a lorry owned by the 2nd respondent and insured with the 3rd respondent. The claimant has further contended that the accident has happened solely due to the rash and negligent driving on the part of the driver of the transport corporation. In the prayer column, he had prayed for an award only as against the transport corporation.



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3. The insurance company of the lorry had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the bus belonging to the transport corporation.

4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the lorry and thereafter, proceeded to fix the compensation at the rate of Rs.3,07,000/- and had directed the owner of the lorry and the insurance company to pay the compensation. Challenging the said award, the present appeal has been filed by the insurance company of the lorry.

5. According to the learned counsel appearing for the insurance company, even as per the claim petition, the entire negligence was on the part of the driver of the transport corporation bus. It is specifically contended in Paragraph No.6 of the claim petition that the lorry owner and the insurer have been added only as formal parties. He further pointed out that the prayer in the claim petition was directed only as



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against the transport corporation. That being so, the tribunal was not right in shifting the liability upon the lorry and the insurer of the said lorry. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the transport corporation had contended that due to some inadvertent mistake, they had remained ex parte and they would like to file a counter and contest the allegations made in the claim petition. Hence, he prayed for an order of remand to the claims tribunal to establish the fact that their driver was not responsible for the accident.

7. The learned counsel appearing for the claimant had contended that the entire award amount has been deposited by the insurance company and they have withdrawn only 50% of the same. In case, if an order of remand is passed, it will be difficult for them to enjoy the fruits of the award amount. Hence, he prayed that he may be permitted to withdraw the balance 50% also and after remand, the contest may be restricted to the *inter se* dispute between the transport corporation and the insurance company.



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8. I have carefully considered the submissions made on either side and perused the records.

9. A careful reading of the claim petition indicates that the claimant being a passenger of the transport corporation bus, has categorically made allegations of rash and negligent driving only upon the driver of the transport corporation. The prayer in the claim petition is also directed only as against the transport corporation. Therefore, it is clear that the lorry owner and its insurer would be taken by surprise if any liability is shifted upon them without any pleading on the side of the claimant. After considering the oral and documentary evidence, the tribunal has arrived at a finding that the driver of the lorry was negligent and only due to the said fact, the accident has taken place. However, this finding has been arrived at when the transport corporation had remained ex parte without even filing a counter. Therefore, this Court is of the view that the matter should be remitted back to the file of the Motor Accident Claims Tribunal to decide the *inter se* liability between the transport corporation bus and the lorry owned by the 2nd respondent. However, the claimant shall not be dragged into the said dispute. The claimant shall be permitted to withdraw the balance 50% amount along



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with accrued interest. In case, if the tribunal arrives at a finding that the transport corporation is liable to pay the compensation, the insurance company is at liberty to file execution proceedings in this claim petition itself for recovering the award amount from the transport corporation.

10. In view of the above said deliberations, this Court passes the following orders:

(i) The matter is remitted back to the file of Motor Accident Claims Tribunal, Karur. After remand, the transport corporation shall file their counter within a period of four (4) weeks from the date of receipt of notice from the tribunal.

(ii) The claimant shall be permitted to withdraw the balance amount along with accrued interest.

(iii) In case, the tribunal arrives at a finding that the driver of the transport corporation was responsible for the accident, the award amount can be recovered by the insurance company by filing execution proceeding in the claim petition itself.



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11. With the above said observations, this Civil Miscellaneous Appeal stands allowed. The finding relating to negligence recorded by the tribunal are hereby set aside and it is open to the owners of both the vehicles to let in fresh evidence to establish the negligence. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal
cum District Judge,
Karur.
- 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
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