



C.M.A.Nos.4519 to 4522, 4538, 4539 & 4541 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.4519 to 4522, 4538, 4539 & 4541 of 2019

and

C.M.P.Nos.25578, 25596, 25583, 25590, 25721, 25724, 25726 of 2019

C.M.A.No.4519 of 2019:

The New India Assurance
Company Limited,
'Macmillan House', II Floor,
No.21, Pattulos Road,
Chennai.

... Appellant

Vs.

1. Shailaja
2. Gurdeep Singh
3. M/s.MGM Entertainment Pvt. Ltd.,
19th Street,
Radhakrishnan Salai,
Mylapore,
Chennai.
4. M/s.Bajaj Allianz General,
Insurance Company Limited,
Door No. , M.G.Road,
Sastri Nagarm
Thiruvanmiyur,
Chennai.

... Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 03rd April, 2019 passed in M.C.O.P.No.125 of 2011, by the Motor Accidents Claims Tribunal (In the III Additional District Court), at Kallakurichi.

C.M.A.No.4519 to 4522 of 2019:

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.P.Mani for R1
Notice dispensed with for R2
Mr.M.Erajasimhan for R3
Mr.S.Arunkumar for R4

C.M.A.No.4538, 4539 & 4541 of 2019:

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.P.Mani for R1
Notice dispensed with for R2
Mr.J.Michael Visuvasam for R3
Mr.M.Erajasimhan for R4

COMMON JUDGMENT

These batch of appeals are filed as against the award passed by the Motor Accidents Claims Tribunal in M.C.O.P.No.116, 117, 125 & 200 of 2011 dated 03.04.2019.

2. Shorn of unnecessary details, the relevant facts necessary for



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disposal of these appeals are as follows:

2.1. On 04.09.2008, the claimant in M.C.O.P.No.117 of 2011 was driving a vehicle bearing Regn.No.TN 09 M 7601 owned by the second respondent herein on the Chennai E.C.R road. His wife, daughter and another relative were travelling as occupants of the car. When the vehicle was nearing Panaiyur resort, the driver crossed, the median and drove the vehicle on the opposite side. At that time, the vehicle, Swaraj Mazda Van bearing Regn.No.TN 07 BZ 0594 came in the opposite direction. The claimant in M.C.O.P.No.117 of 2011, lost control and dashed against the oncoming Swaraj Mazda Van. Due to the accident, the occupants of the car suffered injuries. They were admitted in the Hospital and they took treatment. Claiming compensation from the owner and insurer of both the vehicles, the claimants have filed the claim petitions in M.C.O.P.Nos.116, 117, 125 & 200 of 2011 on the file of Additional District Court, Kallakurichi.

3. The claimants examined themselves as witnesses and marked disability certificate issued by Villupuram Government Hospital and other relevant documents.



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4. The learned Tribunal on an analysis of both the oral and documentary evidence, fixed the negligence on the driver of Mazda Van and directed both the insurance companies to bear 50% of liability and awarded compensation.

5. As regards, M.C.O.P.No.117 of 2007, the Tribunal, while fastening the negligence on the driver of the Van fixed the entire liability on the New India Insurance company and directed the company to pay the compensation of Rs.4,19,000/-. Challenging the liability to pay compensation, both the insurance companies have filed the present appeals.

6. Before the adverting to the genuineness of the claim and counter claim of both the parties, this Court would like to reiterate the basic legal principles governing cases involved in motor accidents. The Tribunal is primarily called upon to find which vehicle or driver was at fault. Only after fastening the negligence, the next question of liability arises. If the offending vehicle is insured, then the insurer becomes liable



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to pay compensation.

7. On the other hand if the vehicle is not insured, the owner of the vehicle would become liable to pay the compensation. Bearing in mind this basic concept, this Court proceeds to analyze the merits of the claim petitions.

8. The wife of the Driver of the car was examined as P.W.1 in M.C.O.P.Nos.116, 125, 200 of 2011 has categorically admitted in the cross examination that the driver of the vehicle namely her husband, who has filed claim petition in M.C.O.P.No.117 of 2011 had lost control of the vehicle and he was the reason for the accident. Likewise, P.W.2 another claimant has categorically admitted in her cross examination that the driver of the vehicle bearing Regn.No.TN 09 M 7601 crossed the barricade and had entered the opposite and was driving the vehicle in a rash manner. She has admitted that the vehicle in which they were travelling dashed against the Mazda Van and thereby they suffered injuries.



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9. It is pertinent to note that the F.I.R. was registered only as against the claimant in M.C.O.P.No.117 of 2011 before the Neelankarai Police Station in Crime No.656 of 2008, however, the learned Tribunal has strangely fixed the negligence on the driver of the Mazda Van bearing Regn.No. TN 07 BZ 0594 . It is pertinent to note that the said van was being driven only in its lane.

10. The learned Tribunal has not given any reason for fixing negligence aspect on the driver of the van when the evidence is otherwise. The fact that the F.I.R. is also registered only against the driver of the car bearing Regn.No. TN 09 M 7601 was at fault. That being the case, the Tribunal has grossly erred in fixing the negligence aspect on the driver of the van. Bearing this in mind, this Court now proceeds to deal with the appeals filed by the insurance companies.

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11. These appeals are filed by the New India Assurance Co. Ltd., and Bajaj Allianz General Insurance Co. Ltd. Aggrieved by the



fixation of 50% of liability on each of them to pay the compensation fixed by the Tribunal. The arguments advanced by both the counsels are almost similar, therefore these appeals are disposed of together.

12. The learned counsel vehemently contended that the driver of the car bearing Regn.No.TN 09 M 7601 was not the owner of the car. The car stands in the name of the second respondent herein. No doubt the New India Assurance Company Limited is the insurer of the said car. Before fixing the liability on any of the Insurance companies, the Tribunal ought to have satisfied itself that the negligence was on a particular driver. In these M.C.O.P's, without any iota of doubt, the Driver of the car bearing Regn.No.TN 09 M 7601 was at fault. He has crossed the lane, drove the vehicle in a rash and negligent manner and dashed against the oncoming Mazda Van. The oral evidence is clear on this aspect and Police have also registered an F.I.R. against the car driver. Despite the enormity of evidence before it, the Tribunal went on to hold that the driver of the Van was at fault. To arrive at such a basic conclusion, the Tribunal has not given any reason supported by the evidence when the basic necessity, while determining a claim petition



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involved in motor accident, namely fixing the negligence aspect, has been validated by the Tribunal. This Court has no hesitation to hold that the learned Tribunal has done complete injustice in these M.C.O.P's.

13. Apart from the negligence factor, the claimants in M.C.O.P.Nos.116, 125 and 200 of 2011 were travelling in the said car as a gratuitous passengers.

14. The Hon'ble Supreme Court in the case of ***United India Insurance Company Vs. Tilak Singh and ors.*** has held that the insurance company owes no liability towards the injuries suffered by the occupants of the vehicle who travelled as gratuitous passengers. In the said case, the Hon'ble Supreme Court has quoted a number of decisions of the said Court wherein similar view has been taken consistently by the Hon'ble Apex Court that a third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward." The insurance company was held not liable to reimburse the appellant in the case of *Dr.T.V.Jose Vs. Chacko P.M. alias Thankachan and Ors.*



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15. In view of the categorical finding of the Hon'ble Apex Court on the issue of compensation payable towards gratuitous passengers, this Court accepts the arguments advanced by the appellants in these appeals.

16. In the result, the appeals are allowed and the judgment and decree dated 03.04.2019 made in M.C.O.P.Nos. 116, 125 and 200 of 2011 passed by the Motor Accidents Claims Tribunal (III Additional District Court), Kallakurichi, is set aside. If any amount deposited by the respective appellants /insurance companies in respective C.M.A's, the appellants are permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

C.M.A.No.4521 of 2019:

17. This appeal has been filed by the New India Assurance Co.



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Ltd, Challenging the award of the learned Tribunal fixing 100% liability on the insurance company and directing them to pay the compensation amount fixed towards the claim petition.

18. The learned Tribunal has framed the following point for consideration namely whether the accident would come under the provisions of Section 163A of the Motor Vehicles Act ? While answering the point, the learned Tribunal has discussed the evidence against P.W.1 in that original M.C.O.P. namely driver of the car bearing Regn.No.TN 09 M 7601. The learned Tribunal has placed reliance on a single statement of P.W.1 wherein he has stated that the driver of the van was responsible for the accident and soon after the accident, they passed out. At that time, the driver of the van has lodged F.I.R blaming him for the accident.

19. The learned Tribunal has been carried award by this evidence of P.W.1 to fix negligence on the driver of the Mazda van.



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20. At the risk of repetition, this Court reminds itself of the evidence of the wife of the claimant wherein she has categorically admitted that her husband was at fault and he has crossed the lane and dashed against the oncoming van. Having recorded the said statement in the connected M.C.O.P.'s, strangely, the learned Tribunal has placed reliance on the stray statement of the driver to hold that the driver of the van was responsible for the accident.

21. The learned counsel for the appellant stood strong objection to the fact that the claim petition was filed under Section 163A of Motor Vehicles Act and the learned Tribunal ought to have rejected the claim petition at the threshold.

22. The learned counsel submitted that the claimant is not the owner of the vehicle and he has borrowed it from the second respondent herein and as such he has stepped into the shoes of the second respondent / owner of the vehicle. Therefore, he is not entitled to any compensation. The relationship between the first and second respondents namely that of employer and employee has also not established before the Tribunal. The



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first respondent herein has given the vehicle as a borrower and his wife, child and another relative have travelled as gratuitous passengers. Therefore, the claim petition filed invoking Section 163 A is erroneous, when the Tribunal ought to have rejected the same. The learned counsel pressed into series of judgments of Hon'ble Apex Court in the case of ***Ramkhiladi and ors.*** and submitted that the owner of the vehicle is not entitled for any compensation and filing a claim petition under Section 163A of the Act is barred.

23. This Court, though in principle is in agreement with the proposition that the owner of the vehicle is generally not entitled for compensation, the said ruling of the Hon'ble Supreme Court in ***Ramkhiladi's*** case is not applicable to the facts of this case in ***Ramkhiladi's*** case, the claimants had filed claim against the owner of the vehicle and its insurer. The claimant had borrowed the vehicle, travelled in the said vehicle and met with an accident. Though in that case, the negligence was purely fixed on the offending vehicle which came in the opposite direction, the claimants having chosen to sue the owner of the



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offending vehicle or its insurer, however, in this case, the claimant have made the owner of the Mazda van and its insurer as respondents 3 and 4 in the claim petition. Therefore, the said judgment of the Hon'ble Apex Court is not applicable to the facts of this case.

24. However, this is a clear case where the negligence is completely attributed to the driver of the car bearing Regn.No.TN 09 M 7601. Both the oral and documentary evidence proved the said fact. Proving the negligence on the driver who is the first hurdle to be crossed in a claim petition. The claimants have miserably failed in the first test itself. As noted earlier without any iota of doubt, the driver of the car is solely responsible for the accident. Therefore, this Court has no hesitation to hold that the Tribunal has grossly missed all the flags raised by the insurance company in this claim petition. This Court *prima facie* satisfied that the Tribunal has fixed the negligence on a wrong person.

25. Therefore, the award passed by the Tribunal is set aside and this appeal is allowed and the judgment and decree dated 03.04.2019 made in M.C.O.P.No.117 of 2011 passed by the Motor Accidents Claims



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Tribunal (III Additional District Court), Kallakurichi, is set aside. If any amount deposited by the appellant in C.M.A.No.4521 of 2019 /insurance company, the appellant/insurance company is permitted to withdraw the same by filing appropriate application before the Tribunal. No costs. Consequently, the connected miscellaneous petitions are closed.

25.11.2024

RAP

Netrual Citation Case : Yes / No



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1. Motor Accidents Claims Tribunal (In the III Additional District Court), at Kallakurichi.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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