



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.579 of 2020

M/s.Honeywel Technology Solutions Lab Pvt. Ltd.,
Sy No.96 & 97,
RM2 Eco World Campus,
Bellandur Post office,
Bangalore-560 103.

Amended as vide court order
dated 28.10.2021 in CMP. No.16595/2021
in CMA. No.579 of 2020

... Appellant

Vs.

1. Govindasamy
2. Bajaj Allianz General Insurance Co. Ltd.,
Rep. By its Branch Manager,
Branch Office, Ground floor,
No.31, TBR Tower, First Cross
New Mission Road, Bangalore.

3. Ashish Balaya
R3 impleaded vide order dated 02.09.2022
CMP. No.16598/2021 in CMA. No.579/2020

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the impugned order dated 20.01.2017 passed by the Special Sub Court MACT, Krishnagiri in MCOP.



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No.820/2013 insofar as relates to allowing of said case as against the appellant herein.

For Appellant : M/s.R.Santhanalakshmi

For Respondents : Mr.S.Arunkumar R2

R1- No appearance

R3- Disd vide order dated 21.12.2023

JUDGMENT

The appellant is the first respondent in M.C.O.P.No.820 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri. The first respondent herein has filed the said claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming a sum of Rs.5,00,000/~ as compensation for the injuries sustained in the accident that took place on 26.09.2009.

2. According to first respondent, on 26.09.2009, at about 8.45 A.M., while he was proceeding in his bicycle in Bangalore to Chennai NH Road, at that time, a car bearing Reg. No.KA 05 MA 7819 belonging to the appellant, which was insured with the second respondent driven by its driver driven the car in a rash and negligent manner and dashed against the first respondent cycle, due to which, the first respondent



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sustained injuries. In the impact, the first respondent sustained multiple grievous injuries all over his body. Therefore, the first respondent filed the said claim petition against the appellant and the second respondent-insurance company, being the owner and insurer of the car respectively.

3. Before the Tribunal, the first respondent examined himself as P.W.1 and the doctor, who treated the claimant, has examined as PW2 and 7 documents were marked as Exs.P1 to P5, on the side of the claimant. The Insurance Company examined one witness as R.W.1 and marked 4 documents as Exs.R1 to R4.

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that due to rash and negligent driving of the driver of the car, the accident had happened and directed the appellant~Insurance Company to pay a sum of Rs.2,65,500/~ as compensation to the first respondent at the first instance and recover the same from the second respondent, owner of the car.

5. Against the said award dated 20.01.2017 made in



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M.C.O.P.No.820 of 2013, the appellant~owner of the vehicle has come out with the present appeal.

6. The learned counsel appearing for the appellant contended that the appellant is the owner of the vehicle bearing Reg. No.KA 05 MA 7819. At that time purchase of the vehicle, the appellant has borrowed car loan from ICICI Bank and subsequently, cancelled the hypothecation agreement on 16.08.2008. On the very same day, the appellant transferred the said vehicle in the name of one Ashish Balaiah, who is the third respondent herein. Before the Tribunal, no notice has been served on the appellant and the Tribunal has passed exparte order by fixing the liability on the appellant herein which is not sustainable one.

7. The learned counsel further submitted that before the trial court, transfer the name of the vehicle from the appellant to the third respondent was not brought to the notice of the Court. Even then, the Tribunal has passed pay and recover method only on the ground that at that time of the accident, the driver of the car has not possessed valid driving license. However, an award was passed as against the appellant



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without issuing notice to the appellant, which is clear violation law.

Hence, this Court may set aside the impugned award passed by the Tribunal.

8. The learned counsel for the insurance company submitted that admittedly the appellant is the owner of the vehicle. Thereafter, the appellant claimed that she transferred the vehicle in the name of the third respondent. However, on perusal of the claim petition which reveals that before the Tribunal the appellant has served notice. Even after receipt of such notice, no one appeared on behalf of the appellant. Hence, the Tribunal passed ex-parte order, which is perfectly in order and the same needs no interference.

9. Though notice has been served on the first respondent, there is no representation on his behalf.

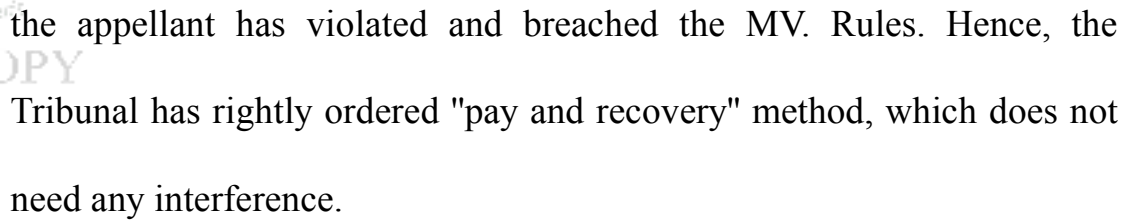
10. Heard the learned counsel appearing for the appellant and the learned counsel for the Insurance Company and perused the entire materials on record.



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11. From the materials available on record, it is seen that it is the contention of the first respondent that the due to rash and negligent driving by the driver of the car, the accident had happened and he sustained injuries. To substantiate the same, the first respondent examined himself as P.W.1. According to the appellant, she was not served with notice before the Tribunal and ex-parte order was passed. Further, the involved vehicle was transferred in the name of the third respondent before the accident and therefore, the appellant is not liable to pay the compensation.

12. On perusal of the original records, it is seen that before the Tribunal, the appellant has been served notice with the very same address. Even receipt of the same, the appellant has not appeared. Before the Tribunal, PW1 has produced insurance copy, which proves that the said car was insured with the second respondent by the appellant herein. Further, as per MVI report, at that time of the accident, the driver has not possessed valid driving license. The Tribunal has found that the appellant has permitted the driver to drive the car without any valid license. Hence,



13. With the above discussion, this Civil Miscellaneous Appeal is dismissed. No costs. However, liberty is granted to the appellant as well as the third respondent to canvass all the points before the concerned Court at the time of recovery proceeding to be initiated by the second respondent.

20.11.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Judge, Special Sub Court MACT, Krishnagiri



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M.DHANDAPANI.,J

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