



C.M.A.(MD)No.1337 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 22.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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and

M.P(MD) No.3 of 2012

M/s.Oriental Insurance Company Ltd.,
Regional Office
M.G.Road
Bangalore

... Appellant/ Respondent No.2

Vs.

1. Muthulakshmi
2. Sundar Raj
3. Mohammed Sihab

.. Respondent No.1/Petitioner No.1
.. Respondent No.2/ Petitioner No.2
.. Respondent No.3/ Respondent No.1

Prayer : This 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 Sub Court, Tiruchirapalli made in M.C.O.P.No.63 of 2006 dated 31.01.2011 and allow the appeal

For Appellant	: Mr.C.Jawahar Ravindran
For R1& R2	: Mr.C.Padmaraj
For R3	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.63 of 2006 on the file of the Motor Accidents Claims



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Tribunal/ III Additional Sub Court Trichy dated 31.1.2011, Wherein the respondents 1 and 2 herein have filed claim petition as against the third respondent and the appellant/herein

2. The Tribunal has awarded a sum of Rs.4,00,000/- to the claimants by directing the appellant herein to pay the above said amount. As against the award passed by the Tribunal the third respondent/Insurance company Insurance company has filed this present Civil Miscellaneous Appeal.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the petition before the trial Court are as follows:

On 17.11.2014 at about 11.30 pm., one Jeyakrishnan was proceeding in Trichy to Chennai main road in bicycle at that time the first respondent lorry bearing Reg. No. KA 01AA 8786 insured with the second respondent driven by its driver in a rash and negligent manner and hit against the Cyclist Jeyakrishnan, due to the impact the deceased died in the accident and the accident took place to the rash and negligence on the part of the driver of the first respondent. The deceased was aged about 26 years on the date of



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the accident and he was earning a sum of Rs.6000/- per month by doing electrician work, therefore the claimants claimed a sum of Rs 15 lakhs towards compensation.

5. The brief contention of the averments counter filed by the second respondent are as follows:

The petition is not maintainable either in law or facts. The respondent denies the age, income, occupation of the deceased and manner of the accident. The accident took place due to the negligence on the part of the bicyclist. Since the accident was not occurred due to the negligence on the part of the first respondent driver, the second respondent is not liable to pay any compensation to the petitioner.

6. In order to prove the case of the petitioners they have examined P.W.1 marked documents Exs.P.1 to P.4. On the side of the respondents R.W.1 was examined and marked exhibits R.1 to R. 3.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs.4,00,000/- towards compensation and directed the second respondent in the main petition and the appellant herein to pay the amount to the petitioners. Aggrieved by the above



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said order the second respondent/ Insurance company has filed this appeal on various grounds.

8. The learned counsel appearing for the appellant would contend that the accident was occurred due to negligence on the part of the bicyclist and not by negligence on the part of the driver of the first respondent. More over the first respondent vehicle was not insured with the second respondent and the petitioners have not given the full details of the policy, therefore appellant/second respondent is not liable to pay any compensation,. The appellant/ second respondent has examined R.W.1 and as per the evidence of R.W.1 as per the records maintained by the office of the appellant/second respondent there is no records found with regard to the policy issued in favour of the first respondent vehicle, and the petitioners also failed to mention the policy number, thereby the second respondent is not liable to pay any compensation to the respondents 1 and 2/ Petitioners. But the Tribunal without considering the above said aspects awarded compensation and directed the appellant/second respondent to pay the compensation to the respondents 1 and 2/ petitioners/claimants . Therefore the award passed by the Tribunal is liable to be set aside.



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9. The learned counsel appearing for the respondents 1 and 2 / petitioners would contend that third respondent/ first respondent vehicle was driven by its driver in a rash and negligent manner and caused the accident. The third respondent/ first respondent vehicle was duly insured with the appellant/second respondent. As per the Motor Vehicle Inspector Report /Ex.P. 4, the third respondent/ first respondent vehicle was insured with the appellant/second respondent insurance company on the date of accident, therefore the appellant/second respondent is liable to pay compensation to the respondents 1 and 2/petitioners/Claimants. The Tribunal also after taking into consideration all these aspects correctly awarded the compensation by directing the appellant/second respondent to pay the compensation and hence the appeal is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?



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11. In this case according to the petitioners the accident took place due to negligence on the part of the driver of the third respondent/ first respondent. In order to prove the same, on the side of the respondents 1 to 3 /petitioners, they have examined P.W.1 and marked Exhibits P.1 to P.4 and on perusal of evidence of P.W.1 and exhibits P.1 to P.4 they reveal that the accident took place due to the rash and negligent on the part of the driver of the third respondent/ first respondent. In order to rebut the above said evidence of respondents 1 and 2 /petitioners' side no contra evidence adduced by the appellant/second respondent on negligent aspect. In the absence of contra evidence, evidence of respondents 1 and 2 /petitioners side is reliable and acceptable. Therefore the petitioners have proved the rash and negligence on the part of the driver of the third respondent/ first respondent . The Tribunal also after relying the evidences adduced on either side correctly fixed the negligence on the part of the driver of the third respondent/ first respondent . Therefore this Court is of the opinion that the accident took place due to negligence on the part of the the driver of the third respondent/ first respondent.

12. The main contention of the appellant/second respondent is that the vehicle involved in the accident i.e, first respondent was not insured with the



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appellant/ second respondent on the date of accident. According to the respondents 1 and 2 /petitioners, the first respondent vehicle was insured with the appellant/ second respondent company on the date of accident and the same was also revealed in the Motor Vehicle Inspector report and the said report was marked as Ex.P.4. On careful perusal of Ex.P.4 it reveals that the third respondent /first respondent vehicle was inspected by the Motor Vehicle Inspector and he mentioned the name of the insurance company in which the vehicle was insured and also mentioned the date of validity of insurance policy. On the date of accident the policy was in force which insured with the second respondent company. Therefore the respondents 1 and 2 /petitioners have proved that the third respondent/ first respondent vehicle was insured with the appellant /second respondent company on the date of accident.

13. Per contra the appellant /second respondents have examined RW1 and he deposed that as per the records, there is no documents found to show that the vehicle was insured with the appellant /second respondent. Once the Motor Vehicle Inspector who is competent authority to inspect the vehicle has recorded in the accident report that the vehicle was insured with the appellant/ second respondent company, it is for the appellant /second respondent to disprove that the said vehicle was not insured with the appellant /second respondent. In order to disprove the same, no sufficient evidence was adduced



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by the appellant /second respondent except R.W.1 and Ex.R1 to R3. The evidence of R.W.1 and Ex.R1 to R3 are not sufficient to prove the case of the appellant /second respondent. Therefore this Court is of the opinion that the respondents 1 and 2 /petitioners have proved that the third respondent/ first respondent vehicle was insured with the appellant /second respondent company and thereby they are liable to pay the award amount. The Tribunal also after elaborate discussion fairly came to conclusion that the respondents 1 and 2 petitioners proved that the vehicle was insured with the appellant/ second respondent company.

14. There is no dispute with regard to the quantum of award amount passed by the Tribunal. The respondents 1 to 2/petitioners have not preferred any appeal as against the quantum of award amount and the present appeal has also been filed only on the ground of liability. Therefore as discussed supra this Court is of the opinion that there is no infirmity or perverse found in the order of the Tribunal and this Court has no warrant to interfere with the order of the Tribunal, therefore the present Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

15. In the result, the Civil Miscellaneous Appeal stands dismissed and the order of the Sub Court, Motor Accident Claims Tribunal, Tiruchirapalli made



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in M.C.O.P.No.63 of 2006 dated 31.01.2011 is hereby confirmed. The Appellant/Insurance Company is hereby directed to deposit the compensation as awarded by the Tribunal along with interest within a period of two months from the date of receipt of this order. Consequently connected miscellaneous petition is closed.

22.01.2024

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

1. The Motor Accident Claims Tribunal,
III Additional Sub Court Trichy
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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