



C.M.A.(MD)Nos.1155 and 1156 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)Nos.1155 and 1156 of 2013

C.M.A(MD) No.1155 of 2013:

The National Insurance Company Limited,
6, West Masi Street,
Madurai - 1

Represented by its Branch Manager.

... Appellant/3rd Respondent

-vs-

1. Velusamy

... 1st Respondent/Petitioner

2. Sekarpandian

... 2nd Respondent/1st Respondent

3. Chandran

... 3rd Respondent/2nd Respondent

4. The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi.

... 4th Respondent/ 4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.12.2002 made in M.C.O.P.No.121 of 2001 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar District.



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For Appellant : Mr.S.Srinivasaraghavan
For R1 : Mr.K.Kaviarasan
For R2 to R4 : No appearance

C.M.A(MD) No.1156 of 2013:

The National Insurance Company Limited,
6, West Masi Street,
Madurai - 1

Represented by its Branch Manager. ... Appellant/3rd Respondent

-vs-

1. Ramalakshmi ... 1st Respondent/Petitioner
2. Sekarpandian ... 2nd Respondent/1st Respondent
3. Chandran ... 3rd Respondent/2nd Respondent
4. The Managing Director,
Tamil Nadu State Transport Corporation,
Karaikudi. ... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 24.12.2002 made in M.C.O.P.No.51 of 2002 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar District.

For Appellant : Mr.S.Srinivasaraghavan
For R1 : Mr.K.Kaviarasan
For R2 to R4 : No appearance



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COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant as against the common order passed in M.C.O.P.Nos.121 of 2001 and 51 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar District, wherein, the respective first respondent in these appeals have preferred claim petitions as against the other respondents herein for compensation and the Tribunal has awarded compensation by directing the respondents 1 to 3 in the claim petition to pay the same jointly and severally. As against the order passed by the Tribunal, the third respondent/Insurance Company has filed the present appeals.

2. The brief facts of the petition averments before the Tribunal are as follows:

On 19.12.1998, the petitioners have travelled in the bus belonging to the Tamil Nadu State Transport Corporation bearing Registration No. TN-63-N-400 from Ramanathapuram to Madurai. At the time, at about 07.20.p.m near Vellakurichi Vilakku, a Tipper Lorry bearing Registration No.TN-59-



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E-3499 came in a rash and negligent manner and dashed against the bus, whereby the petitioners along with others sustained grievous injuries. The accident took place due to the negligence on the part of the driver of the Lorry. The said lorry was insured with the third respondent/Insurance Company and thereby, the respondents are liable to pay compensation to the petitioners.

3. The counter filed by the third respondent in both the petitions are as follows:

The averments made in the petitions are utter false and the petitions are liable to be dismissed. The driver of the first respondent Lorry was driving in a slow speed with cautious, but the bus driver/4th respondent drove the bus in a rash and negligent manner and caused accident and thereby, the third respondent is not liable to pay the compensation for the claim of the petitioners.

4. Before the Tribunal both petitions were heard together and joint trial was conducted and common award was passed. On the side of the petitioners, they examined P.W.1 to P.W.3 and marked Exs.P.1 to P.21. On the side of the



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respondents, they have examined R.W.1 to R.W. 4 and marked Exs.R.1 to R.10.

5. After hearing both sides and perusing the records, the Tribunal has awarded compensation for a sum of Rs.54,800/- (Rupees Fifty Four Thousand and Eight Hundred only) in M.C.O.P.No.121 of 2001 and a sum of Rs.1,01,250/- (Rupees One Lakh One Thousand Two Hundred and Fifty only) in M.C.O.P.No.51 of 2002 with interest at the rate of 9% p.a and the respondents 1 to 3 are jointly and severally liable to pay the compensation.

6. Aggrieved over by the above said orders, the present appeals have been filed by the third respondent/Insurance Company on various grounds including that the premium amount was collected through cheque, but the same was not encashed, since it was dishonoured.

7. The learned counsel appearing for the appellant would contend that the first and second respondents' vehicle was insured with the third respondent. The owner of the vehicle has issued cheque and also obtained policy and thereafter, cheque was dishonored and thereby, the Insurance



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Company is not liable to pay any compensation. The Tribunal has failed to consider the same and despite that, awarded compensation to the petitioners by fixing the liability on the Insurance Company. The Tribunal has awarded excess amount to the petitioners. Therefore, the award passed by the Tribunal is liable to be set aside.

8. The learned counsel appearing for the first respondent/petitioners/ the claimants would contend that the Insurance Company had issued a policy for the offending vehicle and the policy was also in force on the date of accident and thereby, the Insurance Company is liable to pay the compensation. The appellant/third respondent/Insurance Company failed to prove that the cheque was dishonored and the said fact was informed to the owner of the vehicle i.e., respondents 1 and 2. The Tribunal after taking into consideration of all the aspects, held that all the respondents are jointly and severally liable to pay the compensation. Therefore, the present appeals are liable to be dismissed.

9. After hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in these appeals is:



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- i. Whether the appeal in C.M.A(MD) No.1155 of 2013 is liable to be allowed or not?; and
- ii. Whether the appeal in C.M.A(MD) No.1156 of 2013 is liable to be allowed or not?.

Points No.1 and 2:

10. In these cases, there is no dispute with regard to the accident and the negligence on the part of the driver of the respondents 1 and 2. Further, with regard to the quantum of the amount awarded by the Tribunal, the first respondent/petitioners/claimants, have not filed any appeals as against the quantum of the amount awarded by the Tribunal. The Insurance Company/third respondent filed these appeals on the main ground that the owner of the vehicle issued Cheque for the premium amount. But the above cheque has not been encashed due to dishonor of cheque. Thereafter, the said dishonor of cheque was intimated to the owner of the vehicles and thereby, the Insurance Company is not liable to pay any compensation to the petitioners.

11. In this context, the Insurance Company has examined witnesses and marked documents and on careful perusal of the evidences adduced by the



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Insurance Company, there is no proof that the factum of dishonor of cheque was intimated to the owner of the vehicle.

12. The Tribunal has also categorically discussed in the order by citing the judgment of the Hon'ble Supreme Court (***The New India Insurance Company Limited Vs Ruu Law and others***) wherein the Hon'ble Supreme Court Paragraph No.10 held as follows:

“10. This decision which in a 3 Judge Bench decision squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonored would not affect the rights of the third-party which had accrued on the issuance of the policy of the date on which the accident took place. It on the date of accident, there was a policy of insurance in respect of the vehicle in question the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of Insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party”.



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13. On careful perusal of the said Judgment it is clear that if the Insurance Company failed to prove that the factum of dishonour of cheque was informed to the owner of the vehicle, the Insurance Company is liable to pay the compensation to the petitioners, since they are 3rd parties to the Insurance Company. In the case on hand also the Insurance Company failed to prove that the dishonour of cheque was intimated to the owner of the vehicle involved in the accident i.e., respondents 1 and 2.

14. In the absence of proper evidence on the side of the appellant / third respondent/Insurance Company, it is not appropriate to exonerate the Insurance Company from the liability, since they took policy in the name of the owner of the vehicle which involved in the accident. Therefore, there is no infirmity or perversity in the order passed by the Tribunal. Therefore, this Court finds no warrant to interfere with the order passed by the Tribunal.

15. In view of the above said discussions, this Court is of the opinion that these appeals have no merit and they deserve to be dismissed. The order passed by the Tribunal in M.C.O.P Nos.121 of 2001 and 51 of 2002 dated 24.12.2002 are confirmed.



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16. In the result, this Civil Miscellaneous Appeal in C.M.A(MD) No. 1155 of 2013 is dismissed and order passed in M.C.O.P.No.121 of 2001 on the file of the the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar District is confirmed.

17. In the result, this Civil Miscellaneous Appeal in C.M.A(MD) No. 1156 of 2013 is dismissed and order passed in M.C.O.P.No.51 of 2002 on the file of the the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Virudhunagar District is confirmed. There shall be no order as to costs.

18.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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- To
1. The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court,
Virudhunagar District.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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