



C.M.A.(MD)No.1466 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1466 of 2011

The Divisional Manager,
Royal Sundaram Alliance General
Insurance Company Limited,
45/46, Whites Road,
Chennai.

... Appellant/2nd Respondent

-vs-

1.G.Thiyagarajan

... 1st Respondent/Petitioner

2.Veyil Murugan

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 28.01.2011 and made in M.C.O.P.No.1296 of 2007 on the file of the Motor Accident Claims (IV Additional Sub Court), Madurai.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.A.Theethar

For R2 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.1296 of 2007 on the file of the Motor Accident Claims (IV Additional Sub Court), Madurai, wherein, the first respondent herein has filed a petition seeking for compensation, arising out of the Motor Accident Claims.

2. The Tribunal has awarded a sum of Rs.1,36,600/- (Rupees One Lakh Thirty Six Thousand and Six Hundred only). Against the order passed by the Tribunal, the present appeal has been filed by the second respondent/ Insurance Company by disputing the liability.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 18.02.2006, at about 19.15 hours, near Ceylon colony, Bismi Nagar, Andipatti to Theni main road, Theni, while the petitioner was travelling as a pillion rider in a motor cycle bearing Registration No.TN-59-AA-1274, the said motor cycle was hit by another vehicle and



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met with an accident due to the rash and negligent driving on the part of the driver of the first respondent. The petitioner sustained grievous injuries. The first respondent being owner of the motor vehicle, which is involved in the case and the second respondent, who is the insurer of the vehicle, are liable to pay compensation to the petitioner.

4. The brief averments in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts as against the second respondent, since no extra premium or additional premium has been collected to cover the risk of the pillion rider of the first respondent's vehicle. The policy has been issued to cover the own damages and the accident had not occurred due to the negligence on the part of the rider of the two wheeler. Hence, the second respondent is not liable to pay the compensation to the petitioner.



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5. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.3 witnesses have been examined and Exhibits P.1 to P.6 were marked. On the side of the respondents, R.W.1 was examined and Exhibits R1 and R2 were marked.

6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.1,36,600/- (Rupees One Lakh Thirty Six Thousand and Six Hundred only) with interest at the rate of 7.5% p.a from the date of application till the date of realization. As against the award passed by the Tribunal, the present appeal was filed by the second respondent.

7. The learned counsel appearing for the appellant would contend that the petitioner filed a petition seeking for compensation as against the first respondent and the first respondent's vehicle was hit by an unknown vehicle. Though the first respondent's vehicle was insured with the second respondent/ Insurance company on the date of accident, the second respondent is not liable to pay any compensation to the petitioner, since the accident was occurred by unknown vehicle. But, the



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Tribunal without considering the above said aspects, directed the second respondent to pay the compensation. Hence, the award passed by the Tribunal is liable to be set aside by allowing this appeal.

8. The learned counsel appearing for the first respondent would contend that the petition was filed under Section 163-A of the Motor Vehicle Act. Though the petitioner was travelling as a pillion rider, the said vehicle in which he travelled was hit by the unidentified vehicle. Since the petition is filed under Section 163-A of the Motor Vehicle Act, it is sufficient to prove the involvement of the vehicle in an accident. Since the petitioner was travelled as a pillion rider in the first respondent vehicle and his vehicle was insured with the second respondent, the second respondent is liable to pay the compensation to the petitioner.

9. This Court, after hearing the learned counsels appearing on either side and perusing the records including the order of the Tribunal, frames the following points for determination in this appeal:

“ Whether the appeal is liable to be allowed or not?”



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10. In this case, according to the appellant, the accident took place due to the negligence on the part of the driver of the unknown vehicle and thereby, the appellant is not liable to pay compensation to the petitioner. It is well settled principle of law that as far as the maintainability of the petition under Section 163-A Motor Vehicle Act is concerned, proof of the involvement of the vehicle in an accident alone is sufficient. In this case, the petitioner was travelling as a pillion rider in the two wheeler of the first respondent. Therefore, there is no need to prove the negligence. The second respondent being the insurer of the first respondent's vehicle is liable to pay compensation to the petitioner. The petitioner does not have any dispute in the quantum of the award amount passed by the Tribunal. The appellant had also not disputed the quantum of the claim amount. The first respondent had also not disputed the claim of the petitioner. Therefore, the order passed by the Tribunal in respect of awarding compensation and fixing of liability are in order and warrant no interference.



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11. The learned counsel appearing for the appellant relied upon the judgment of the Hon'ble Supreme Court in **(2015) 9 SCC 273 (Khenyei Vs. New India Assurance Company Limited and others)** wherein the Hon'ble Supreme Court held in Paragraph No.18 as follows:

“18. This Court in [Challa Bharathamma & Nanjappan](#) (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not



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open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.”

12. On careful perusal of the said judgment it is clear that the apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor, and it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. In the case on hand also the unknown vehicle hit against the petitioner, and the petition is filed under Section 163-A of Motor Vehicle Act and there by no question of negligence would arise. However, it is for the appellant to workout his remedy to recover the amount after satisfying the award to the petitioner in accordance with law.

13. In view of the above said discussion, this appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.1296 of 2007 on the file of the Motor Accident Claims (IV Additional Sub



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Court), Madurai is modified to the effect that the appellant has to pay the amount to the petitioner and thereafter, recover the same from the owner of the offending vehicle which involved in the accident by filing a separate proceedings in accordance with law. There shall be no order as to costs.

09.02.2024

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

1. The Motor Accident Claims (IV Additional Sub Court),
Madurai,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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