



C.M.A. (MD) No. 477 of 2012

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Dated: 30.01.2024

CORAM:

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

C.M.A.(MD)No.477 of 2012

The Branch Manager
United India Insurance Company Limited
Xavier Building, 2nd Floor, P.W.D.Road
Post Box No.50, Nagercoil ... Appellant/ Respondent No.2

Vs.

1. The Superintendent Engineer
Tamil Nadu Electricity Board
Virudhunagar Electricity Distribution Circle
Virudhunagar .. Petitioner
2. T.M.Muneer .. Respondents/1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order and decree dated 12.10.2009 passed in M.A.C.O.P. No.47 of 2004 on the file of the Motor Accidents Claims Tribunal, Sub Court, Srivilliputhur.

For Appellant : Mr.J.S.Murali
For R1 : Mr.B.Ramanathan
For R2 : Dismissed

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.A.C.O.P. No.47 of 2004 on the file of the Motor



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Accidents Claims Tribunal, Sub Court, Srivilliputhur, wherein the first respondent herein has filed petition for compensation before Tribunal against the second respondent and appellant herein.

2. The Tribunal has awarded a sum of Rs.1,68,170/- directing the appellant/second respondent to pay the said amount with interest @ 7.5% per annum. As against the award passed by the Tribunal the present appeal has been filed by the appellant/second respondent.

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 case before the Tribunal are as follows:

On 31.12.2002 at about 10.00 a.m., when the construction work was going near Devathanam Sastha Koil dam, the driver of the first respondent lorry bearing Reg.No. TN 41 H 9465 drove the lorry in a rash and negligent manner and dashed against the transformer installed near Devathanam village and damaged the transformer worth about Rs.1,68,170/-. The incident took place due to rash and negligence on the part of the driver of the first



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respondent. The first respondent lorry was insured with the second respondent , therefore the respondents are liable to pay the above said compensation amount.

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

The incident was not occurred as alleged in the petition. On 31.12.2002 at about 10.00 am., the concerned vehicle bearing Reg.No.TN 41 H 9465 was not plied at that place i.e., Devathanam Sastha Kovil and no occurrence was happened as alleged in the petition. Infact the first respondent construction company has so many lorries and the lorry bearing Reg. No .KL 07 1219 only dashed against the transformer, since there was no insurance for the said lorry on the date of incident the present lorry has been included in this case. On 01.01.2003 at about 17.30 hrs inorder to cheat the second respondent respondent First Information Report has been registered by including this lorry. To that effect the second respondent lodged complaint before the CBCID police and the same is pending. Hence the second respondent is not liable to pay any compensation to the petitioner, therefore this petition is liable to be dismissed.



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6. Inorder to prove the case of the petitioner they have examined P.W.1 and marked documents Exps.P.1 to P.7 On the side of the respondents R.W.1 to R.W. 3 were examined and Exhibits Exs.R.1 and R7 were marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has allowed the petition and directed the second respondent to pay a sum of Rs.1,68,170/-with interest @ 7.5 % per annum from the date of petition till the realization of the amount.

8. Aggrieved by the above said order the second respondent/ Insurance company has filed this appeal on various grounds mainly on the ground that the vehicle shown in this case was not involved in the incident. After the incident the vehicle was included in this crime later and thereby the appellant/second respondent is not liable to pay any compensation.

9. The learned counsel appearing for the appellant would contend that the occurrence was not happened as alleged in the petition. Infact the lorry bearing Reg.No. TN 41 H 9465 was not involved in the incident and the lorry Reg. No. KL 071219 only



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involved in the accident. Since the said lorry was not insured with the insurance company the present lorry has been included with a view to get compensation. In order to prove the case of the appellant/second respondent they have examined R.W.1 to R.W.3 and marked Exhibits Ex.R.1 to R.7 and the evidenced adduced on the side of the respondent clearly proved the case of the appellant/second respondent that the present vehicle was not involved in the accident. The appellant/second respondent also lodged complaint before the CBCID police and the same is pending but the Tribunal without considering the above said aspects erroneously allowed the application and directed the appellant/second respondent to pay the above said award amount. Therefore the award passed by the Tribunal is liable to be set aside by allowing this appeal.

10. The learned counsel appearing for the first respondent/petitioner would contend that the driver of the lorry bearing Reg. No. TN 41 H 9465 drove the lorry in a rash and negligent manner and dashed against the transformer on the date of accident in the Devathanam village and thereby caused damage for a tune of Rs.1,68,170/- and the First Information Report has been registered as against the driver of the lorry bearing Reg. No. TN 41



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H 9465. The driver of the lorry admitted the offence before the criminal court and paid fine, thereby the petitioner has proved the involvement of the lorry in the accident and also proved the rash and negligence on the part of the driver of the lorry. Though the respondents have examined R.W.1 to R.W.3 and marked exhibits Ex.R.1 to R.7 that is not sufficient to prove the contention on the side of the appellant. Per contra the petitioner has examined P.W.1 and marked documents Ex.P.1 to P.7 and more over the driver of the vehicle admitted the crime and paid the fine amount. Therefore the Tribunal after taking into consideration of all the aspects clearly came to conclusion that the incident took place due to negligence on the part of the driver of the first respondent. Therefore the present appeal is liable to be dismissed.

11. 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?

12. In this case, according to the appellant, the vehicle shown in the petition did not involve in the incident and the same has been subsequently included and First Information Report also registered



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as against the driver of the lorry. According to the first respondent/petitioner, appellant/second respondent vehicle only involved in the incident and the driver of the vehicle admitted the offence and paid the fine amount before the criminal Court. In order to prove the case the first respondent/petitioner himself was examined as P.W.1 and marked documents Ex.P.1 to P.7. On careful perusal of P.W.1 and exhibits Ex.P.1 to P.7, they revealed that lorry bearing Reg. No. TN 41 H 9465 was involved in the accident and as against the driver of the above said vehicle, First Information Report has been registered and he also admitted the guilt and paid the fine amount before the concerned jurisdictional Magistrate Court. Therefore from the evidence of petitioner side witness they revealed that the vehicle bearing Reg. No. TN 41 H 9465 only involved in the accident. Per contra the appellant/second respondent have also examined R.W.1 to R.W.3 and marked exhibits R.1 to R.7. On careful perusal of the above said evidence and documents they revealed that the appellant/second respondent denied the involvement of the vehicle and also lodged complaint before the CBCID police for which First Information Report has also been registered in Crime No. 1 of 2006 as against the first respondent /petitioner and thereafter charge sheet was also filed and the same is pending for further proceedings.



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13. According to the respondent side evidence TN 41 H 9465 was not involved in the incident and the same was wrongly included in this case thereby the complaint was lodged by the appellant/second respondent and the criminal case is pending.

14. This Court on careful perusal of the entire records, it is seen that once the First Information Report has been registered as against the driver of the vehicle and the driver also admitted the offence and paid the fine amount before the concerned jurisdictional court, it is presumed that the particular vehicle had involved in the accident. Though the appellant/second respondent has given complaint before the CBCID police the same is pending for adjudication. Unless the order of the jurisdictional Magistrate Court is set aside by way of appeal or other proceedings it has to be presumed that the occurrence was happened. Further the appellant/respondent have only produced a copy of the charge sheet and not examined any other witnesses. Even according to the charge sheet i.e., Ex.R.1, the driver of the vehicle was not included as an accused, per contra the said driver himself admitted the offence and who is the competent person to speak about the incident. Therefore this Court is of the opinion that the first respondent/petitioner have



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proved the occurrence and the incident took place only due to the rash and negligence on the part of the driver of the first respondent lorry bearing Reg. No. TN 41 H 9465. Therefore the contention of the appellant/second respondent that the vehicle TN 41 H 9465 was not involved in the incident is not acceptable.

15. The Tribunal also in the order elaborately discussed the involvement of the vehicle and also discussed about the evidence adduced on the respondent side and fairly came to conclusion that the vehicle bearing Reg.No. TN 41 H 9465 only involved in the incident. Therefore the Tribunal correctly came to fair conclusion and thereby this Court has no warrant to interfere with the order passed by the Tribunal and hence the appeal is liable to be dismissed.

16. In the result, the Civil Miscellaneous Appeal stands dismissed and the order of the Sub Court, Srivilliputhur, Motor Accidents Claims Tribunal in M.A.C.O.P. No.47 of 2004 dated 12.10.2009 is hereby confirmed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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WEB COPY **To:**

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



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P. DHANABAL, J.

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