



C.M.A(MD)No.300 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.07.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.300 of 2013
and
C.M.P(MD)Nos.2724 & 4515 of 2021

Devanesam

... Appellant

Vs.

1.Maxwell Prem Kumar alias Kumar

2.National Insurance Company Limited,
Through its Branch Manager,
Office at Anguvilas Buildings,
Post Box No.112, North Car Street,
Nagercoil, K.K.District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree, dated 27.11.2006 made in M.C.O.P.No.612 of 2004 on the file of the Motor Accident Claims Tribunal cum Additional Judge, (Fast Tract Court No.1), Tirunelveli.

For Appellant : Mr.M.P.Senthil

R-1 : Dispense with

For R-2 : Mr.C.R.Krishnamoorthy



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JUDGMENT

The civil miscellaneous appeal is preferred by the owner of the vehicle. According to the appellant, he is the erstwhile owner of the mini lorry. Hence, the appellant has filed a petition in C.M.P.(MD)No.2724 of 2021 to implead the original owner, who is the subsequent purchaser of the mini lorry.

2. It is a case of the injury. The contention of the appellant is that even though he is the owner of the vehicle in earlier point of time, at the time of accident, he had already sold the vehicle. Hence, he may not be made liable to pay the compensation. The present appeal is preferred, since liability is fixed on the owner of the vehicle.

3. The Tribunal had rendered a finding that at the time of accident, the lorry is covered by insurance. Therefore, C.M.P.(MD)No. 2724 of 2021 to implead the subsequent purchaser may not be necessary.

4. The next contention of the owner of the vehicle is that when the vehicle is insured then the Insurance Company is liable to pay the



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compensation. However, the Tribunal has rendered a finding that the deceased was not travelling as a load-man but as a gratuitous passenger.

The deceased was travelling along with the cattle, but while returning the cattle were sold and the deceased was travelling in the empty vehicle. Hence the Tribunal had held while returning the mini lorry was not carrying any cattle, hence the owner was made liable. Based on the sole reason, the Tribunal has fixed the negligence on the part of the owner of the vehicle. This Court is of the considered opinion that the said reason cannot be sustained for a reason that while travelling from Mettupalayam to Boothapandi, admittedly cattle were carried as per the driver and cleaner of the mini lorry. Even according to the injured, the accident occurred while the lorry was returning after selling the cattle.

5. It is not necessary that while returning the loadman ought to travel separately. The loadman cannot be prevented from travelling in the mini lorry. It is a settled proposition if the cattle were carried while on the onward journey then the loadman is entitled to travel while returning. In short, if the cattle was there in any 'one way' journey, it is sufficient to fix the liability on the Insurance Company.



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6. Therefore, this Court is interfering with the order. The impugned order is set aside. The Insurance Company is liable to pay the compensation. The Insurance Company is directed to deposit Rs. 1,26,500/- with interest at the rate of 7.5% per annum and costs to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal.

7. With the above said observations, the civil miscellaneous appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petitions stands closed.

23.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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- 1.The Motor Accident Claims Tribunal cum
Additional Judge, (Fast Tract Court No.1),
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

BTR

Judgment made in
C.M.A(MD)No.300 of 2013

23.07.2024