



C.M.A.(MD)No.538 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.01.2024

CORAM:

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

C.M.A.(MD)No.538 of 2013

and

M.P.(MD)No.1 of 2013

New India Assurance Co. Ltd.,  
through its Branch Manager,  
21, GN Chetty Street,  
T.Nagar, Chennai.

...Appellants

Vs.

1.Balasubramanian

2.Shanmugavel

3.David

...Respondents

PRAYER: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2005 passed in MACOP No.7 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

For Appellant : Mr.I.Robert Chandra Kumar

For Respondents : Mr.D.Rajkumar (R2)

for M/s.P.Jeyapal Associates

No appearance (R1 & R3)



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### **JUDGMENT**

This Civil Miscellaneous Appeal has been preferred against the order passed in MACOP No.7 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Tirunelveli.

2. The present appellant is the insurance company, who is the second respondent in the claim petition. The claim petition has been filed by the first respondent herein against the respondents 2 and 3 and the appellant herein seeking for compensation of Rs.3,00,000/-.

3. The first respondent / claimant has filed the claim petition before the tribunal stating that on 17.02.2003 at about 12.30 hours, when he was riding the motorcycle bearing TAT-888 as a pillion rider, a lorry bearing Registration No.TN-72-V-3587 belonging to the second respondent herein, insured with the appellant insurance company dashed against the motorcycle. Thereby, the first respondent / claimant sustained injuries and he was immediately taken to TVMC hospital, Tirunelveli and thereafter



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taken treatment at various private hospitals. Hence, the first respondent / claimant sought for compensation of Rs.3,00,000/- for the injuries sustained by him through filing the claim petition.

4. The appellant insurance company filed a counter before the tribunal stating that age, income and occupation of the first respondent / claimant are denied and the claimant sustained only simple injuries and he had not lost his earning capacity and there is no permanent disability. The act of the driver of the lorry having driven the lorry in a drunken mood is in violation of conditions of the insurance policy. Hence, the appellant insurance company is not liable to pay any compensation to the first respondent / claimant.

5. In order to prove the case of the first respondent / claimant, before the Tribunal, PWs.1 to 3 were examined and Exs.P1 to P9 documents were marked and on the side of the appellant insurance company, R.W.1 was examined and Exs.R1 and R2 were marked. MO.1 and MO2 were also marked.



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6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.37,500/- towards compensation. Aggrieved over the award of compensation passed by the Tribunal, the appellant insurance company has preferred the present Civil Miscellaneous Appeal on the ground that the driver of the lorry having driven the lorry in a drunken mood is in violation of conditions of the appellant insurance policy and the insurance company is not liable to pay any compensation to the first respondent / claimant.

7. The learned counsel appearing for the appellant would contend that the driver of the lorry had driven the lorry in a drunken mood and thereby, there is a violation of conditions of the insurance policy and hence, the insurance company is not liable to pay any compensation to the first respondent / claimant. The trial Court, without considering the same awarded compensation. To support of his contention, he relied on a decision of this Court in the case of *K.Muthu vs. C.Chandrasekar and another* reported in *2000 (III) CTC 21*. Hence, he prayed to allow this appeal. He would further contend that the entire compensation amount has already been deposited.



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**8.** The learned counsel appearing for the second respondent, who is the owner of the lorry would contend that the second respondent herein was not in a drunken mood and in the charge sheet filed by the police, there is no proof that the driver of the lorry was in a drunken mood. With regard to the same, none of the police officials were examined by the appellant / second respondent. Without any sufficient evidence, the contention of the appellant insurance company is not acceptable. The tribunal, after considering all the aspects, rightly awarded fair compensation and hence, the insurance company is liable to pay the entire compensation. There is no violation of insurance policy as alleged by the appellant insurance company. Therefore, this appeal is liable to be dismissed.

**9.** After hearing both sides and upon perusing the documents including the order of the Tribunal by this Court, the point for determination in this appeal is whether the appeal has to be allowed or not.

**10.** In this case, there is no dispute with regard to the negligence on the part of the driver of the lorry and the vehicle of the second respondent herein was insured with the appellant insurance company.



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**11.** The main contention of the appellant insurance company is that the driver of the lorry was in a drunken mood and thereby caused the accident and therefore, there is a violation of conditions of the insurance policy and hence, the appellant insurance company is not liable to pay any compensation to the first respondent / claimant.

**12.** The said contention of the appellant insurance company was denied by the second respondent herein stating that driver of the lorry was not in a drunken mood and there is no document filed by the appellant insurance company to prove the said contention and they have only filed the charge sheet. Mere filing of the charge sheet is not sufficient to prove the negligence on the part of the driver of the lorry.

**13.** This Court perused the records carefully, which reveal that except the charge sheet, no other documents have been filed by the appellant insurance company to prove that the driver of the lorry was in a drunken mood. It is settled law that mere marking of a document will not amount to proof and the appellant insurance company has to prove his



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contention through sufficient evidence. But, the appellant insurance company failed to produce any other documents. Therefore, the contention of the appellant insurance company that the driver of the lorry was in a drunken mood at the time of accident and thereby violated the conditions of the insurance policy is not acceptable.

**14.** The tribunal after evaluating the oral and documentary evidence, has awarded the compensation. The said award of compensation is a fair reasonable one. Therefore, this Court has no warrant to interfere with the order passed by the tribunal.

**15.** In the same accident, another person namely Raja also sustained injuries and the tribunal awarded a sum of Rs.1,30,000/- in the claim petition filed by the said Raja in MCOP No.5 of 2005. The appellant insurance company has deposited the entire amount in that case and the appellant has not filed any appeal as against the award of compensation and thereby, the appellant insurance company admits his liability without preferring any appeal against the said claim petition arising out of the same accident.



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16. As far as the judgment relied upon by the learned counsel appearing for the appellant in the case of *K.Muthu vs. C.Chandrasekar and another* reported in *2000 (III) CTC 21* is concerned, it is not applicable to the facts of the present case. The appellant insurance company failed to prove the drunken state of the driver of the lorry. In view of the aforesaid discussions, this Court is of the opinion that this civil miscellaneous appeal has no merits and deserves to be dismissed. Accordingly, this civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
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**TO:-**

- 1.The Motor Accidents Claims Tribunal  
(Chief Judicial Magistrate), Tirunelveli.
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P. DHANABAL, J.**

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Judgment made in  
C.M.A.(MD)No.538 of 2013

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