



C.M.A.(MD).No.817 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.12.2023

Delivered On : 09.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.817 of 2013

National Insurance Company Limited,
Branch Office, Anguvilas Building,
North Car Street, Nagercoil.

... Appellant

Vs.

1.Saravanakumar
2.Justus

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 27.06.2011 passed in M.A.C.O.P.No.100 of 2010 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Thoothukudi.

For Appellant	: Mr.D.Sivaraman
For R1	: Mr.B.Rajesh Saravanan
For R2	: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the appellant/second respondent, challenging the compensation awarded on certain counts by the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), at Thoothukudi in M.A.C.O.P.No.100 of 2010 dated 27.06.2011.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.A.C.O.P.No.100 of 2010.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

(i)The petitioner is the registered owner of the offending vehicle bearing registration No.TN-69-J-5096. On 14.08.2009 at about 00.45 hours, the petitioner's driver drove the lorry bearing registration No. TN-69-J-5096 with Coir Bale load. While the vehicle was passing in front of K.T.C. Depo near K.T.C. Nager, Tirunelveli, the first respondent's Taurus lorry bearing registration No.TN-04-L-3722 driven in a rash and negligent manner in a high speed came from opposite



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direction and dashed against the petitioner's vehicle with great force and as the result of which, the petitioner's lorry sustained the following damages:-

“Glass: Both side Front wind shield glass broken, font RHS quarter glass broken, route board glass 2 no's broken.

Electrical: RHS Head light crushed 2 no's LHS light missing 2 no's. RHS Indicator light broken indicator light at LHS Ok. Speedometer glass broken, RPM gauge and two other meter missing Wiper asm & Blade damaged, Wiper motor damaged Wiring harness cut/Damaged.

Cabin: Front bumper found removed, RHS dented badly, Head Light Panel in RHS Crushed, Grills damaged, Front Panel center & RHS dented, wiper panel dented 4” show beading below wind sheild glass damaged. Wind shield frame totally be shaped, Route board box and front portion of roof top damaged, RHS of cabin panel and angular shutter damaged. Dash board panel bent and lifted, Engine covering shield dislocated & bend including hood, RHS of front corner panel & foot step dented Cabin is totally damaged & twisted.

Mechanical: Steering column bent backwards, Steering wheel bent; Worm shaft cut, Intake manifold broken; Master cylinder damaged, Air intake pipe cracked, Silencer doom got damaged, Accelerator rod bend. Fan leaf bent, Fly wheel housing broken, Power steering hoses & Pipes damaged;



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Reservoir dented, Speedometer cable crushed, Radiator & Air pre cooler bent.”

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(ii) Immediately after the accident, the petitioner gave a complaint before the Tirunelveli Corporation T.I.W. Police Station and a criminal case in Crime No.45 of 1999 was registered as against the first respondent's driver. Seeking compensation of Rs.5,00,000/- for the said damages to the lorry bearing registration No. TN-69-J-5096, the petitioner has filed the claim petition.

4.The first respondent is the owner of the lorry and the second respondent is the insurance company with which the vehicle was insured. The second respondent had filed a counter refuting each and every allegations set forth in the claim petitions.

5.The learned Tribunal has framed two issues. On the side of the petitioner, three witnesses P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P23 were marked. On the side of the respondents, two witnesses R.W. 1 and R.W.2 were examined and Ex.R1 and Ex.R2 were marked. The first



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respondent was called absent and set exparte. On the basis of oral and documentary evidence and on the basis of the arguments put forth by respective parties, the learned Tribunal proceeded to conclude that the driver of the first respondent was responsible for the accident. The second respondent being the insurance company and the first respondent being insurer are jointly entitled to compensate the petitioner. On the basis of the evidence of P.W.3 and other documents marked, the learned Tribunal proceeded to pass the award of Rs.1,70,000/- to be paid to the petitioner.

6.Challenging the same, the appellant/second respondent has preferred this Civil Miscellaneous Appeal.

7.The learned counsel for the appellant/second respondent vehemently submitted that the fitness certificate issued to the lorry bearing registration No.TN-69-J-5096 was in force from 06.08.2008 to 05.08.2009. No fitness certificate was in force on the date of accident I.e. On 14.08.2009 and that the permit issued to the petitioner in respect to the aforesaid lorry was cancelled with effect from 31.03.2009 due to non



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payment of road tax payable under the permit and hence, the petitioner violated the permit conditions by allowing his lorry to ply on the road without valid fitness certificate and permit. The learned Tribunal ought not to have directed the second respondent insurance company to indemnify the first respondent.

8.However, the learned counsel for the first respondent submitted that it is not necessary to interfere with the award passed by the learned Tribunal.

9.The learned counsel for the appellant/second respondent has relied upon the judgment of this Court in the case of ***Divisional Manager v. S.Sowkath Ali and others in C.M.A.Nos.384 and 385 of 2008*** and the relevant portion of which is extracted as follows:-

“7. In appeal, the learned counsel for the appellant contended that since the vehicle in this case did not have a valid fitness certificate and was allowed to be used by the owner contrary to the terms and conditions of the Insurance Policy, they are not liable to compensate the claimants. There is breach of condition of Policy and on that ground, the owner alone is liable to compensate the claimants. Learned counsel for the



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claimants, on the other hand relied on the decision of a Division Bench of this Court in Velammal and others Vs. P.Kanaga and others reported in 2006 ACJ 1039. In this case, the following two issues were considered by the Division Bench:

- 1. The vehicle was covered by an insurance policy on the date of accident is not in dispute. But the insurer seeks to avoid its liability on the ground of violation of policy conditions,namely,i) The vehicle has no valid fitness Certificate.*
- ii) the vehicle was driven by a driver who did not possess the authorisation to drive max cab or the driver was not possessed of a valid licence to drive the max cab.*

8. The Division Bench while holding that the Insurance Company is not liable for violation of policy condition, held that the insurer insofar as a claim by third parties is concerned, has to first pay the claimant and proceed against the owner of the vehicle to recover the amount paid by it. The relevant portion reads as follows:

" In the result, we hold that the insurer cannot avoid the liability to answer the claim of the third parties, but the insurer is at liberty to proceed against the owner of the vehicle and recover the amount paid by it after paying the claimants-appellants herein"



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10.A perusal of evidence of R.W.1 one Madasamy who served as Assistant in the Marthandam RTO office and the evidence of R.W.2 one Shanmugarajan who served as Assistant in second respondent's company and Ex.R1, DCB register under Tamil Nadu Motor Vehicle Taxation Act and the insurance policy, Ex.R2, it becomes clear that the permit issued to the petitioner in respect of the lorry bearing registration No.TN-69-J-5096 was cancelled with effect from 31.03.2009 due to non payment of road tax payable under permit. It could also be ascertained from the evidence of R.W.1 and R.W.2 that the fitness certificate issued to the said lorry was in force only from 06.08.2008 till 05.08.2009 and no fitness certificate was on force on the date of accident I.e. on 14.08.2009. Absence of fitness certificate would amount to breach of policy condition.

11.In view of the same, adopting the principles followed by this Court in aforesaid judgment discussed supra. I am inclined to modify the award passed by the learned Tribunal by directing the appellant/second respondent to pay the compensation amount and to recover the same from the first respondent.



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12.The petitioner/claimant is entitled to a sum of Rs.1,70,000/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent/insurance company is directed to deposit Rs.1,70,000/- with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

13.Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.01.2024

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

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L.VICTORIA GOWRI, J.

Mrn

To

- 1.Motor Accident Claims Tribunal
Chief Judicial Magistrate,
Thoothukudi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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