



C.M.A(MD)No.772 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.772 of 2019

and

C.M.P(MD)No.9961 of 2019

The Manager,
M/s.Bajaj Alliance Insurance Company Limited,
No.108, II Floor, Kathibavan Criminal Section(Opposite),
T.K.B.Road, Madurai-625 001.

... Appellant/2nd Respondent

Vs.

1.Arokiyadoss

... Respondent/Petitioner

2.Kalimuthu

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the judgment and decree in M.C.O.P.No.926 of 2017, dated 26.03.2019 on the file of the Motor Accident Claims Tribunal, Special District Court, Thanjavur.

For Appellant : Mr.J.S.Murali

For Respondents : No Appearance



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JUDGMENT

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The present appeal has been filed by the insurance company challenging the award passed in M.C.O.P.No.926 of 2017 on the file of Motor Accident Claims Tribunal / Special District Court, Thanjavur primarily on the ground of liability.

2. According to the injured claimant, while he was riding a TVS 50 on 18.02.2006 at about 06.00 p.m, a Bajaj CT-100 was driven by the 1st respondent in a rash and negligent manner and he had dashed against the vehicle of the claimant. Due to the said impact, he had sustained grievous injuries and he was admitted to hospital. The claimant has prayed for a compensation of Rs15,00,000/-.

3. The insurance company of the Bajaj CT-100 had filed a counter specifically taking a stand that the said vehicle was not involved in the alleged accident on 18.02.2006 and they have further pointed out that F.I.R registered at the instance of the claimant was closed as mistake of fact on 17.04.2006. Hence, according to the appellant insurance company, it was a case of hit and run and therefore, they are not liable to pay any compensation.



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4. The tribunal in paragraph no.15 of the award has arrived at a finding that the 2nd respondent insurance company has admitted the accident and the involvement of the vehicle. But they have only disputed the manner of accident. On the basis of the above said finding, liability was mulcted upon the appellant insurance company. The tribunal has proceeded to award a compensation of Rs.2,29,500/-. Challenging the said award, the present appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the insurance company, the appellant had never admitted the involvement of the vehicle in the said accident. In such circumstances, the tribunal had erroneously arrived at such a finding without any basis whatsoever. When the number of the vehicle was not mentioned in the F.I.R, it is not known how the vehicle belonging to the 1st respondent was put up in the claim petition. Hence, he prayed for allowing the appeal.

6. Though the respondents have been served, they have not chosen to appear either in person or through counsel. Hence, this Court proceeds to decide the appeal on the basis of the submission made by the learned counsel appearing for the appellant insurance company.



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7. According to the claimant, the accident has taken place on 18.02.2006 at 06.00 p.m. The F.I.R has been lodged by the claimant himself on 22.02.2006 at 07.00 a.m. In the said F.I.R., the registration number of the vehicle or the brand of the vehicle has not been mentioned. Under Exhibit P.3, the vehicle owned by the 1st respondent which is alleged to have involved in the accident was subjected to inspection. After inspection of the motor vehicle, the police authorities have arrived at a finding that the complaint is not correct and they have closed the F.I.R as mistake of fact on 17.04.2006. The closure of F.I.R as mistake of fact is reflected in Exhibit R.7 letter addressed by the Deputy Superintendent of Police to the insurance company.

8. When the F.I.R does not disclose the number of the vehicle involved in the accident and on a later point of time, the F.I.R has been closed as mistake of fact, it is not known how the vehicle belonged to the 1st respondent was implicated in the claim petition. The claimant was examined as Exhibit P.W.1 and he has not explained the reason for implicating the vehicle belonging to the 1st respondent in the accident. In such circumstances, it is clear that the claimant has not established the



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fact that the vehicle belonging to the 1st respondent was involved in the accident.

9. The appellant insurance company in paragraph no.3 of their counter have specifically contended that the 1st respondent's vehicle was never involved in the accident. In such circumstances, the tribunal has erroneously arrived at a finding that the insurance company has admitted the involvement of the vehicle in the accident. Therefore, the award passed by the tribunal is liable to be set aside.

10. In view of the above said deliberations, the award of the tribunal is set aside and the Civil Miscellaneous Appeal stands allowed. The award amount if any deposited by the appellant insurance company, shall be refunded along with accrued interest. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.06.2024

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

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To

- 1.The Motor Accident Claims Tribunal
Special District Court,
Thanjavur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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