



CMA(MD).Nos.259 and 344 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2024

Pronounced on : 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.259 & 344 of 2018
and CMP(MD).Nos.4593 & 3762 of 2018

C.M.A(MD) No.259 of 2018

M.Karunanidhi

... Appellant/ 3rd Respondent

-VS-

1.Maheswari

2.Minor Vijayasanthana Lakshmi @ viji

S.P.Baluchamy (died)

Lakshmi (died)

3.Santhanam

4.Mahalingam

....Respondents 1 to 4/Petitioners

(Minor represented by her mother
first respondent).

5.Ramachandran

6.M/s.National Insurance Company Limited
Represented by its Divisional Manager
Door No.8A, Presidency Hotel Building
Yanaikkal, Madurai Town



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7.Raj Prabu

...Respondents 5 to 7 / Respondents 1, 2 & 4

CMA(MD).No.344 of 2018:

M.Karunanidhi

...Appellant/3rd Respondent

Vs

R.Thangachamy (died)

1.T.Mariammal

2.T.Ramalakshmi

3.T.Selvi

...Respondents 1 to 3/Petitioners

4.B.Santhanam

5.M/s.National Insurance Company Limited
Represented through its Divisional Manager
Divisional Office
No.3A, North Veli Street
Madurai Town

6.Raj Prabu

...Respondents 4 to 6/Respondents 1, 2 & 4

Prayer in CMA(MD).No.259 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 to modify the judgment and decree dated 18.12.2015 made in MCOP.No.84 of 2003 on the file of the Motor Accident Claims Tribunal / District Judge, Sivagangai by allowing this appeal.

Prayer in CMA(MD).No.344 of 2018: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to modify the judgment and



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decree dated 18.12.2015 made in MCOP.No.152 of 2004 on the file of the Motor Accident Claims Tribunal /District Judge, Sivagangai by allowing this appeal.

C.M.A(MD). No.259 of 2018:

For Appellant	: Mr.R.Suriyanarayanan
For R1 to R3	: Mr.Sathyasingh For Mr.S.Loganathan
For R4	: Mr.R.Senthilkumar
For R5 & R7	: No appearance
For R6	: Mr.D.Sivaraman

C.M.A(MD).No.344 of 2018:

For Appellant	:Mr.R.Suriyanarayanan
For R1 to R4	: Mr.Sathyasingh For Mr.S.Loganathan
For R5	: Mr.D.Sivaraman
For R6	: No appearance

COMMON JUDGMENT

Both the appeals have been filed by the third respondent in MCOP.Nos. 84 of 2003 and 152 of 2004 on the file of the Motor Accident Claims Tribunal/District Court, Sivagangai.

(A)Factual Matrix:

2.According to the claimants in both the claim petitions, the deceased



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persons have travelled as a rider and pillion rider in a two-wheeler on 21.02.2002. At about 11.00 a.m, when the two-wheeler was coming near Ladanenthal Colony, a tractor bearing Registration No.TN-63B-9712 owned by the third respondent and driven by the fourth respondent came from the opposite direction in a rash and negligent manner and dashed against the two-wheeler. Due to the said impact, the rider as well as the pillion rider of the two wheeler have sustained grievous injuries and later passed away. The legal heirs of the rider and the pillion rider of the two wheeler have filed the above said claim petitions.

3.The claim petitions were originally filed as against the Tractor owned by the first respondent bearing Registration No.TN-63C-6032 and insured with the second respondent. Later the claim petitions were amended and the respondents 3 and 4 were impleaded in the claim petition. The claimants have contended that they have erroneously filed the claim petitions as against TN-63C-6032 and the vehicle that was actually involved in the accident was only TN-63B-9712.

4.The first respondent in the claim petition who is the owner of the Tractor had remained exparte in both the claim petitions.

5.The insurer of TN-63C-6032 had filed a counter contending that the vehicle involved in the accident is only TN-63B-9712 owned by the third respondent and driven by the fourth respondent. Since the said vehicle was



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not insured, and the respondents 1 and 3 who are relatives, have put up TN-63C-6032 for claiming compensation.

6.The Tribunal had arrived at a finding that the claimants have made their prayer only as against the respondents 3 and 4 and not against the respondents 1 and 2. Since the prayer is against only the respondents 3 and 4, the Tribunal had proceeded to mulct the liability upon the respondents 3 and 4 who are the owner and the driver of TN-63B-9712. The Tribunal had proceeded to award a sum of Rs.6,00,000/- in MCOP.No.84 of 2003 and Rs. 3,50,000/- in MCOP.No.152 of 2004. Challenging these two awards, the present appeals have been filed by the owner of the Tractor bearing Registration No.TN-63B-9712.

(B).Submissions of the counsels:

7.According to the learned counsel appearing for the appellants, Exhibit P1-F.I.R lodged within 30 minutes from the time of the accident does not disclose the vehicle number. The vehicle belonging to the first respondent bearing Registration No.TN-63C-6032 alone was subjected to the inspection by the motor vehicle inspector. However, a charge sheet was laid as against the Rajaprabhu as if he was driving TN-63B-9712. The Tribunal was not right in mulcting the liability upon the respondents 3 and 4 merely because the claimants have not made any claim as against the respondents 1 and 2. Unless the claimants establish before the Court that the Tractor bearing Registration



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No.TN-63B-9712 was involved in the accident, the liability cannot be fixed upon the appellant/third respondent in the claim petition. Except the charge sheet marked as Exhibit P2, no document has been filed before the Court to establish the involvement of TN-63B-9712. When the involvement of the vehicle has been disputed by him by filing a counter, the burden is upon the claimants to establish the same.

8.The award of the Tribunal is based upon default and not based on any oral or documentary evidence submitted on the side of the claimants. In fact, the ocular evidence presented by the claimants as PW2 in both the claim petitions has not supported the case of the claimants. Hence, he prayed for allowing the appeals.

9.The learned counsel for the respondents/claimants had contended that originally they pleaded that the tractor bearing Registration No.TN-63C-6032 alone was involved. Later after investigation, they came to know that the vehicle number is TN-63B-9712. Hence, the legal heirs of the pillion rider have withdrawn MCOP.No.95 of 2003 and filed the present MCOP.No.152 of 2004. The legal heirs of the rider have amended the claim petition in MCOP.No.84 of 2003 so as to incorporate the correct number of the tractor namely TN-63B-9712. Though number of the tractor was not mentioned in the F.I.R, the name of the driver of the tractor namely Rajaprabhu has been



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correctly mentioned. He had further contended that after investigation, the police officials have found that the tractor bearing Registration No.TN-63B-9712 alone was involved and proceeded to file a charge sheet. Since there was a delay in filing a charge sheet, it was not taken on file. Therefore, the same cannot be a ground to reject the investigation report of the police officials. The learned counsel appearing for the respondents had further contended that by way of oral and documentary evidence, the claimants have established a fact that the tractor involved in the accident is TN-63B-9712 and therefore, the Tribunal was right in mulcting the liability upon the owner of the said vehicle. Hence, he prayed for sustaining the award passed by the Tribunal.

10.I have considered the submissions made on either side and perused the material records.

(C)Analysis:

11.The legal heirs of the pillion rider namely Raja have originally filed MCOP.No.95 of 2003 on the file of the Motor Accident Claims Tribunal, Sivagangai alleging that the vehicle involved in the accident is a tractor bearing registration No.TN-63C-6032. The said claim petition was not pressed on 21.02.2004 and the present claim petition in MCOP.No.152 of 2004 has been filed on 27.04.2004 alleging that the tractor involved in the



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said accident is bearing Registration No.TN-63B-9712 owned by the appellant. The legal heirs of the rider of the two wheeler have filed MCOP.No.84 of 2003 originally implicating the tractor bearing registration No.TN-63C-6032. Later, they have amended the claim petition as per order in I.A.No.734 of 2003 dated 10.12.2003. Therefore, it is clear that originally the tractor bearing Registration No.TN-63C-6032 was implicated by the legal heirs of the both the deceased parties. Later, both of them have implicated the tractor bearing Registration No.TN-63B-9712 owned by the appellant herein. It could be seen from the records that the tractor bearing Registration No.TN-63C-6032 was insured with the National Insurance Company Limited. However, the tractor bearing Registration No.TN-63B-9712 owned by the appellant herein is not an insured vehicle. Therefore, it is clear that the claimants have amended the claim petition from the insured vehicle to an uninsured vehicle.

12.Before the Tribunal, the claimant was examined as PW1 and eye witness by name Shanmuganathan was examined as PW2 in both the claim petitions. During the cross examination, PW2 has admitted that he is not aware of the number of the Tractor involved in the accident. Therefore, PW2 has not supported the case of the claimants. The claimants have relied upon Exhibit P1-F.I.R. The F.I.R was lodged by PW2 Shanmuganathan. In the said



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FIR, the vehicle number was not mentioned and only the name of the driver namely Rajaprabhu was mentioned. However, in Exhibit P2- charge sheet, the number of the vehicle involved in the accident is mentioned as TN-63B-9712 and the charge sheet was closed on the ground that it is time barred. The fourth respondent who is admittedly the driver of the offending vehicle has been examined as RW1. During his chief examination, he has specifically contended that he is employed under the first respondent namely Ramachandran and he was driving TN-63C-6032. He admits that he had driven the vehicle at the time of accident. Further he has deposed that the third respondent namely Karunanidhi has nothing to do with the accident.

13.The learned counsel appearing for the insurance company had contended that originally the vehicle insured with them namely TN-63B-6032 was implicated in the accident for the purposes of claiming compensation from the insurance company. Even though the vehicle actually that was involved in the accident was only TN-63B-9712. They had lodged a criminal complaint as against the concerned parties. Therefore, the claimants have chosen either to withdraw their claim petition or amend the claim petition exonerating TN-63C-6032 and insurer of the said vehicle. He had further contended that the uninsured vehicle namely TN-63B-9712 alone was involved in the accident. Therefore, the Tribunal was right in mulcting the



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liability upon the appellant herein who is the owner of TN-63B-9712.

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14.It is not in dispute that the rider and the pillion rider of a two wheeler had met with an accident due to the impact of a tractor and both of them have passed away. One Rajaprabhu admits that he is the driver of the tractor at the time of the accident. The only dispute that arise for consideration is whether the tractor bearing Registration No.TN-63C-6032 or tractor bearing Registration No.TN-63B-9712 was involved in the accident.

15.In the present case, the petitioners have clearly exonerated TN-63C-6032 and implicated only the vehicle bearing Registration No.TN-63B-9712. It is the case of the appellant herein that his vehicle is not at all involved in the accident, but it has been falsely implicated due to some personal enmity. The appellant herein had filed a counter in both the claim petition contending that his vehicle is not at all involved in the accident. The driver Rajaprabhu was driving only TN-63C-6032 and not his vehicle namely TN-63B-9712. It is to be noted that for reasons best known, the appellant has not entered into the box to support his pleadings. Except the pleadings, no other oral or documentary evidence has been let in on the side of the appellant herein to establish the non-involvement of his vehicle.



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16.If really, the tractor bearing Registration No.TN-63C-6032 was involved in the accident, the claimants would have preferred to implicate the said vehicle in view of the fact that it is insured with the National Insurance Company. They would not have chosen an uninsured vehicle to implicate for claiming compensation.

17.The claim petitions having been directed only as against the third and fourth respondents, naturally the first respondent who is the owner of the tractor bearing Registration No.TN-63C-6032 had remained exparte. A perusal of the charge sheet filed as against the fourth respondent indicates that he was driving TN-63B-9712 at the time of accident.

18.In view of the above said facts, the findings of the Tribunal with regard to the involvement of the vehicle belonging to the appellant is clearly sustainable. A perusal of the quantum of award in both the claim petitions reveal that the award is reasonable and there is no scope for any interference.

19.In view of the above said deliberations, there are no merits in the appeals. These Civil Miscellaneous Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

26.06.2024

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

1. The Motor Accident Claims Tribunal
/District Judge, Sivagangai
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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