



C.M.A.(MD)No.271 of 2016

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Dated: 10.01.2024

CORAM:

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

C.M.A.(MD)No.271 of 2016

in

C.M.P(MD)No.3792 of 2016

National Insurance Company Limited,
Through its Branch Manager,
Divisional Office, Anguvilas Building,
North Car Street,
Nagercoil,
Kanyakumari District.

... Appellant / 3rd respondent

Vs.

1.N.Udayakumar

... 1st Respondent / Claimant

2.Bagavathi Perumal

3.Iyyappan

... 2 and 3 respondents / 1 and 2 respondents

4.Edision

5.Edision

... 4 and 5 Respondents / 4 and 5 Respondents

Prayer : This Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Special Court, Forest Office Cases, Nagercoil, in M.C.O.P.No.8 of 2012 dated 11.05.2015.

For Appellant : Mr.D.Sivaraman

For R1 to R4 : No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.8 of 2012 on the file of the Motor Accident Claims Tribunal, Special Court, Forest Office Cases, Nagercoil, wherein the first respondent herein has filed a claim petition before the Tribunal as against the 2 to 5 respondents herein and the appellant herein, for claiming a compensation of Rs. 7,00,000/-. The Tribunal has awarded a sum of Rs. 90,000/- by directing the third respondent / insurance company, to deposit the amount with interest at the rate of 7.5% from the date of petition till the date of realization of the amount. As against the order passed by the Tribunal, the appellant / insurance company filed this appeal.

2. Brief facts of the petition filed by the Tribunal are as follows:

On 18.05.2009, at about 12.00 p.m., when the petitioner was travelling as a pillion rider in a two wheeler bearing registration No. TN 74 8463, the first respondent driver, drove the bus bearing registration No. TN 27 J 326, in a rash and negligent manner and applied a sudden brake and thereby the side mirror of the bus was damaged and fell on the



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petitioner. The petitioner sustained injuries all over the body. The second respondent is the driver of the bus and the third respondent is the insurer of the bus. Therefore, all the respondents are jointly liable to pay the compensation.

3. Brief facts of the counter filed by the second respondent are as follows :

This petition is not maintainable either in law or facts. When the driver of the bus was applied brake, the front wind glass of the bus was damaged thereby the second respondent is noway liable for the accident. The second respondent bus was insured with the third respondent. Therefore, the third respondent is only liable to pay the compensation to the petitioners.

4. Brief facts of the counter filed by the third respondent are as follows:

The petition is not maintainable either in law or facts. The respondents denied the age, occupation, income of the petitioner. The accident did not take place due to the rash and negligent driving of the



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driver of the bus. In fact, the accident took place due to the rash and negligent act of the rider of the two wheeler. The driver of the bus who is the first respondent herein had no valid licence to drive the bus thereby the third respondent is not liable to pay any compensation to the petitioners.

5. Before the Tribunal, on side of the petitioner, he has examined P.W.1 to P.W.4 and marked Ex.P1 to Ex.P13. On the side of the respondent R.W.1 was examined and Ex.R1 to Ex.R5 were marked. After hearing both sides and perusing the records, the Tribunal has partly allowed the application and awarded a sum of Rs.90,000/- towards compensation and directed the third respondent / insurance company to pay the said amount along with interest at the rate of 7.5% per annum, from the date of petition, till the date of realization. Aggrieved over the said order, the insurance company who is the appellant herein/ third respondent filed the present appeal on various grounds.

6. Learned counsel for the appellant would contend that the accident occurred due to the rash and negligence of the rider of the two wheeler and the driver of the bus, is no way responsible for the accident. Though, the



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bus was insured with this appellant, the driver of the bus has no valid licence to drive the vehicle and there is a violation of condition of the policy, hence the appellant / insurance company is not liable to pay any compensation to the claimant.

7. Further, in order to prove the case of the respondent, they have marked Ex.R2 to Ex.R5 and also they have taken steps to prove that the driver of the mini bus has no valid licence and thereby the insurance company discharged the liability. But the Tribunal has failed to consider the above said aspects and fastened the liability as against the appellant / third respondent to pay the compensation. Therefore, the award passed by the Tribunal is liable to be set aside.

8. Learned counsel appearing for the first respondent / petitioner would contend that the appellant admitted that the offending vehicle / bus was insured with the appellant / insurance company on the date of accident. As far as the petitioner is concerned, he is third party to the insurance company and the insurance company has to pay the amount to the first respondent / petitioner and there is no dispute with regard to the



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quantum of the amount. The insurance company has filed an appeal only on the ground of liability. Therefore, the insurance company has to pay the award amount to the petitioner. Hence the appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeal is:

i) whether the appeal is liable to be allowed or not?

10. In this case, there is no dispute in respect of negligence on the part of the driver of the bus as well as the quantum of the award passed by the Tribunal. The only contention of the appellant is that the driver of the bus had no valid licence and thereby the owner of the bus violated the conditions of the policy and hence the insurance company has to be exonerated from the liability. To support the contention of the appellant, they have relied the judgment of the Hon'ble Division Bench of this Court reported in **2004 (1) TN MAC (DB) 455**, in the case of **National Insurance Company Limited, Bhavani Vs. Samiyathal and Others**.



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11. On careful perusal of the judgment, it is clear that when the insurance company sent notice to the driver as well as the owner of the bus to produce the records relating to the accident like license and other documents. Despite of that, if the owner of the vehicle has not produced any documents, the Court can held that the insurance company discharged its liability to prove that the driver of the vehicle had no valid licence on the date of accident. In the case on hand also, the insurance company has taken steps to produce the driving licence of the driver, despite of that no driving licence was produced by the owner of the vehicle. However, in the above said case, the Hon'ble Division Bench of this Court has ordered to pay and recovery and directed the insurance company to pay the award amount to the claimant and thereafter, the insurance company has to recover the same from the owner of the vehicle.

12. Therefore, in view of the above discussion and the above said judgments, this Court is of the opinion that it is appropriate to direct the appellant to pay the award amount to the first respondent herein / claimant and thereafter the said amount can be recovered by the appellant from the second respondent / first respondent herein.



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed in M.C.O.P.No.8 of 2012 dated 11.05.2015, by the Motor Accident Claims Tribunal, Special Court, Forest Office Cases, Nagercoil, is modified to the effect that the appellant / third respondent has to deposit the award amount along with interest as per the order of the Tribunal, within a period of two months from the date of receipt of a copy of this order and thereafter, the third respondent ie., the appellant herein can recover the same from the second respondent ie., the third respondent herein. After deposit of the entire amount with interest, the petitioner ie., the first respondent herein is at liberty to withdraw the same by filing appropriate application. Consequently, connected miscellaneous petition stands closed.

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

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To:

1. The Motor Accident Claims Tribunal,
Special Court, Forest Office Cases, Nagercoil.
2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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