



C.M.A.(MD)Nos.998 & 999 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD)Nos.998 & 999 of 2018

and

C.M.P.(MD)Nos.10420 & 10421 of 2018

The Senior Divisional Manager,

The United India Insurance Co. Ltd.,

No.7A, West Veli Veethi,

Madurai – 1.

... Appellants in both C.M.As.

-Vs-

1.S.Sathaiah

... 1st respondent in C.M.A.(MD)No.998/2018

1.S.Sethu

... 1st respondent in C.M.A.(MD)No.999/2018

2.R.Sasikumar

... 2nd Respondent in both C.M.As.

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicle Act, 1988, praying to set aside the orders of the Tribunal of Motor Accident Claims Tribunal cum Sub Court, Paramakudi made in M.C.O.P.Nos.72 & 73/2013 dated 26.04.2018 and allow the appeals.

For Appellant : Mr.C.Jawahar Ravindran

For Respondent No.1 : Mr.N.Ranjith

For Respondent No.2 : Mr.S.P.Vijaynivas



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COMMON JUDGMENT

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The instant appeals have been filed by the Insurance Company, challenging the common award passed in M.C.O.P.Nos.72 and 73 of 2013, dated 26.04.2018, on the file of the Motor Accident Claims Tribunal / Sub-Court, Paramakudi, primarily on the ground of liability.

2.According to the injured claimants in both the claim petitions, they were travelling in an auto owned by the first respondent and insured with the second respondent. While they were travelling in the said auto on 18.07.2013, the driver of the said auto one Manikandan has driven the said vehicle in a rash and negligent manner and dashed against an unknown mini lorry. They have prayed for payment of compensation from the owner of the auto and the insurer of the auto.

3.The Insurance Company has taken a specific stand in the counter affidavit, contending that the accident has happened only due to the negligent act on the part of the driver of the unknown mini lorry. The driver and the owner of the mini lorry have not been impleaded. Therefore, it is a case of hit and run and the insurer of the auto in which the claimants were travelling was not responsible to pay the compensation. They have also prayed for setting aside the quantum of award by the Tribunal.



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4.The Tribunal, after considering the oral and documentary evidence has arrived at a finding that FIR laid against the driver of the unknown mini lorry has been closed on the ground of limitation. Therefore, the Tribunal had proceeded to rely upon the ocular evidence of P.W.2., who had deposed that the lorry had not dashed against the auto but on the other hand, the auto alone had dashed against the mini lorry. Relying upon the evidence of P.W.2., the Tribunal has arrived at a finding that the accident has taken place due to the negligence of the driver of the auto and has proceeded to mulct the liability on the insurer of the auto, challenging which, the present appeals are filed.

5.According to the learned Counsel appearing for the appellant / Insurance Company, immediately after the accident, the son-in-law of the injured claimants has lodged the FIR ie., Ex.P.1. In the said statement, it has been specifically mentioned that unknown mini lorry is responsible for the accident. The driver of the auto has been examined as R.W.1 and he has specifically contended that he is not responsible for the accident and only the driver of the unknown mini lorry is responsible for the accident. In the said circumstances, the evidence of the injured claimants alone cannot be relied upon for mulcting the liability on the driver of the auto. Hence, he prayed for setting aside the award passed by the Tribunal.



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6.Per contra, learned Counsel for the respondent / claimant contended that the injured claimants were passengers of the auto. Therefore, they are the eye-witnesses of the said accident. They have specifically pleaded and proved before the Court that the accident took place only due to the negligence on the part of the driver of the auto. In such circumstances, the Tribunal was right in arriving at the finding that the owner of the auto or the insurer of the auto is liable to pay the compensation. Hence, he prayed for sustaining the award passed by the Tribunal.

7.I have carefully considered the submissions made by the learned Counsel and have perused the materials available on record.

8.Admittedly, the injured claimants were passengers of the auto at the time of accident. The accident had taken place on 18.07.2013 at about 10.00 p.m. The FIR has been lodged by the son-in-law of the injured claimants on 19.07.2013 at about 09.00 p.m. In the statement, the de-facto complainant has stated that the accident has taken place only due to the rash and negligent driving on the part of driver of the unknown mini lorry. The driver of the auto which has been examined as R.W.2 has specifically stated that he is not responsible for the accident but the accident has taken place only due to the negligence on the part



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of the lorry driver. His deposition has not been disturbed during his cross examination. However, at the time of filing of the claim petition the claimants have taken a different stand that only the auto driver was responsible for the accident. The Tribunal, while considering the evidence has arrived at a finding that since the negligence on the part of the unknown mini lorry has not been established during investigation, the accident should have happened only due to the negligence on the part of the auto driver. Therefore, it is clear that the finding of the Court below is only based on presumption.

9.The Tribunal has further relied upon the judgment of the Hon'ble Division Bench reported in **2014 (2) TN MAC 874 (DB)**, to arrive at a finding that when two vehicles are responsible for the accident, claim can be made against any one of the owners of the vehicle. This judgment of the Hon'ble Division Bench has been erroneously applied to the facts of the present case. When entire negligence is attributed against the lorry driver and in the claim petition when the entire negligence is attributed against the auto driver, there is no question of joint tortfeasor. In such circumstances, the Tribunal was not right in relying upon the said judgment, which is not applicable to the facts of the present case.



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10.When the claimants have not established that the rider of the auto was solely responsible or atleast partly responsible for the accident, liability cannot be mulcted upon the driver of the auto. In such circumstances, the liability fixed upon the Insurance Company is liable to be set aside.

11.In view of the aforesaid deliberations, the awards passed by the Tribunal is hereby set aside. However, the claimants are at liberty to pursue the appropriate remedy under the Motor Vehicles Act, which are meant for payment of compensation in hit and run cases.

12.Accordingly, both the appeals stand allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.06.2024

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



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To

1.The Motor Accident Claims Tribunal cum Sub Court,
Paramakudi.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

MR

COMMON JUDGMENT MADE IN
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