



C.M.A(MD)No.629 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.629 of 2019

and

C.M.P(MD)No.7753 of 2019

The Regional Officer,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP, 34, Industrial Estate,
Guindy, Chennai-600 032,
now presently at Plot No.2 and 3rd Floor,
Vijay Krishna Plaza,
No.1, Lake area, Melur Main Road,
Mattuthavani, Madurai-625 007.

... Appellant/3rd Respondent

Vs.

1.K.Vasuki

... Respondent/1st Petitioner

2.Minor.K.Dhanabalan

... Respondent/2nd Petitioner

3.Minor.K.Bhuvaneswari

... Respondent/3rd Petitioner

(Minor R2 and R3 represented through their mother R1)

4.Periyakka

... Respondent/4th Petitioner

5.M.Saravanan

... Respondent/1st Respondent



C.M.A(MD)No.629 of 2019

6.Bharathi Axa General Insurance Co. Ltd.,
Through its Manager,
1st Floor, Ferns Icon,
Survey No.28, Doddanakundi Village,
K.R.Puram Hobli,
Bangalore-37.

Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, to set aside the order of compensation awarded by the learned Motor Accident Claims Tribunal cum IV Additional District Court, Madurai in M.C.O.P.No.1206 of 2012, dated 18.04.2018 in so far as the liability of the appellant / 3rd respondent is concerned.

For Appellant : Mr.R.Rajagobal

For R1 - R4 : Mr.V.Sakthivel

For R5 : No Appearance

JUDGMENT

The present appeal has been filed by the Regional Officer of National Highways Authority of India challenging the award passed in M.C.O.P.No.1206 of 2012 on the file of Motor Accident Claims Tribunal / IV Additional District Court, Madurai primarily on the ground of liability.



C.M.A(MD)No.629 of 2019

2. According to the claimants, the deceased was riding a two wheeler on 22.03.2012. At the relevant point of time, one cement lorry belonging to the 1st respondent was parked on the wrong side of the road due to puncture of the rear tyre during the night hours without any signal or any danger lights in the Madurai-Trichy main road. Despite exercising caution, due to the wrong parking of the 1st respondent vehicle by his driver without any signal, the deceased had dashed against the left side of the lorry. Due to the said impact, the victim is said to have fallen down, sustained injuries and later passed away.

3. According to the claimants, the entire negligence is on the part of the driver of the 1st respondent, who had parked the vehicle without any signal during the night hours. Hence, they had prayed for a compensation of Rs.15,00,000/-.

4. The 2nd respondent insurance company had filed a counter contending that the 1st respondent vehicle was not at all involved in the accident and the said vehicle has been falsely implicated. They have further contended that only due to the rash and negligent driving on the part of the deceased person, he had dashed against the parked vehicle



C.M.A(MD)No.629 of 2019

which was parked with signals and putting danger lights on. Hence, they have prayed for exonerating the insurance company.

5. Pending claim petition, the tribunal has passed a *suo motu* order on 13.04.2017 and has impleaded the Regional Officer of National Highways Authority of India on the ground that they have not provided safe roads and they have not taken any action to remove the vehicle that was parked in the middle of the road without any parking lights. According to the tribunal, the National Highways Authority is also responsible for the accident. On the above said basis, the appellant herein was *suo motu* impleaded.

6. After impleading, the appellant herein had filed a counter contending that they are project implementing authorities through the National Highways Authority of India. They have further contended that the accident has taken place due to the negligence on the part of the lorry as well as the rider of the two wheeler. In such circumstances, they are no way responsible for the accident. They have further contended that they are not necessary parties to the claim petition and they have prayed for exonerating them.



C.M.A(MD)No.629 of 2019

7. The tribunal has held that the lorry has been parked in a busy highway for nearly 2 days and the National Highway Authority have not taken any action for towing away of the said lorry. Therefore, they should also be held responsible. The tribunal has proceeded to fix the total compensation at Rs.16,98,130/-. The insurer of the parked lorry, namely Bharathi Axa General Insurance company was mulcted with the liability to satisfy the entire award amount and thereafter, recover 35% of the award amount from the National Highways Authority of India. This order of pay and recovery is under challenge in the present appeal.

8. According to the learned counsel appearing for the appellant, National Highway Authority is a statutory body, meant for implementing the projects of laying the road and maintenance of the road. The present accident has taken place due to the negligence on the part of the rider of the two wheeler, who had dashed against a parked lorry. He further contended that they are no way connected with the accident and therefore, they cannot be mulcted with the liability. When all the safety arrangements have been made in the Trichy-Madurai section, the accident has taken place due to the negligence on the part of the driver of both the vehicles. In such an event, the liability cannot be fixed upon the



C.M.A(MD)No.629 of 2019

statutory body, who was responsible for laying and maintenance of the four way.

9. Per contra, the learned counsel appearing for the insurance company had contended that if the highway authorities have towed away the vehicle under repair, the accident would not have happened and therefore, the order of the tribunal mulcting the 35% of liability upon the National Highway Authority is perfectly in order and he prayed for sustaining the pay and recovery order passed by the tribunal.

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

11. A perusal of the claim petition indicates that the claimants have pleaded that the accident has taken place only due to the negligence on the part of the 1st respondent who is the driver of the parked lorry. There is no allegation as against the National Highways Authority in the claim petition. The tribunal has *suo motu* impleaded the National Highway Authority by an order, dated 13.04.2017. No notice has been issued to the National Highways Authority before impleading them.



C.M.A(MD)No.629 of 2019

After impleading them, they have filed a detailed counter contending that they are not responsible for the accident. The tribunal without considering the pleadings and the evidence let in by either parties, had exceeded its jurisdiction and mulcted the liability upon a 3rd party to the claim petition by *suo motu* impleading the National Highways Authority.

12. Section 168 of the Motor Vehicles Act empowers the tribunal to pass an award as against the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be. Therefore, it is clear that an award could be passed only as against an insurer or owner or driver of the vehicle. The authority who is empowered with the laying of the road or maintenance of the road cannot be mulcted with the liability under the Motor Vehicles Act. The Motor Vehicles Tribunal is just a statutory authority under the Motor Vehicles Act and it does not have any jurisdiction to entertain the tortious claim as against any other person who had not been named under Section 168 of the Motor Vehicles Act. In such circumstances, the tribunal has exceeded its jurisdiction and passed an award as against the 3rd respondent in the claim petition.



C.M.A(MD)No.629 of 2019

13. In view of the above said deliberation, the award passed as against the 3rd respondent in the claim petition, namely the National Highways Authority is hereby set aside and the entire liability is mulcted upon the 2nd respondent in the claim petition, namely Bharathi Axa General Insurance Company. In other respects, the award of the tribunal stands confirmed.

14. In view of the above said observation, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.06.2024

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

gbg

To

1.The Motor Accident Claims Tribunal
cum IV Additional District Court,
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.629 of 2019

R.VIJAYAKUMAR,J.

gbg

Order made in
C.M.A(MD)No.629 of 2019

27.06.2024