



C.M.A.Nos.2944 of 2011 & 495 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.2944 of 2011 & 495 of 2015

and

M.P.No.1 of 2015

C.M.A.No.2944 of 2011

The Oriental Insurance Co. Ltd.,
54, Thali Road, Udumalpet.

... Appellant

Vs.

1.Raja
2.Natchimuthu
3.Boopalan

... Respondents

C.M.A.No.495 of 2015

Boopalan

... Appellant

Vs.

1.Raja
2.Natchimuthu

3.The Oriental Insurance Co. Ltd.,
54, Thali Road, Udumaipettai, Pollachi t.k.

... Respondents

Prayer in C.M.A.No.2944 of 2011 : Civil Miscellaneous Appeal filed
under Section 173 of Motor Vehicles Act, 1988, against the Judgment



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and Decree made in M.A.C.T.O.P.No.937 of 2006 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Coimbatore dated 29.04.2011.

Prayer in C.M.A.No.495 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree rendered by the Tribunal in M.C.O.P.No.937 of 2006 dated 29.4.2011 on the file of court of the Motor Vehicle Accident Claims Tribunal, Coimbatore, (Principal Subordinate Judge's court at Coimbatore) and to allow the civil miscellaneous appeal.

C.M.A.No.2944 of 2011

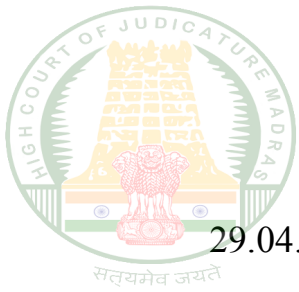
For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.Ma.P.Thangavel [R1]
No appearance [R2]
Mr.V.Kadhirvelu [R3]

C.M.A.No.495 of 2015

For Appellant : Mr.V.Kadhirvelu
For Respondents : Mr.Ma.P.Thangavel [R1]
No appearance [R2]
Mr.M.Krishnamoorthy [R3]

COMMON JUDGMENT

These two appeals arising out of the award passed by the Principal Subordinate Judge, Coimbatore, in M.C.O.P.No.937 of 2006 dated



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29.04.2011.

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2. C.M.A.No.2944 of 2011 is filed by the insurance company questioning their liability to pay the compensation to the claimant.

3. C.M.A.No.495 of 2015 is filed by the owner of the offending vehicle questioning his liability to pay the compensation amount to the insurance company on such payment being made by them to the claimant.

4. Since the issue arises in these two appeal arise out of the accident that happened on 03.09.2005, they are disposed of by way of this common judgment.

5. The brief facts leading to the filing of these two appeal are as follows :-

(i) The claimant, who is not before this Court, had filed a claim petition before the Motor Accident Claims Tribunal claiming a compensation of Rs.3,00,000/- on account of the injuries sustained by him in the accident that happened on 03.09.2005 at about 13.00 hours, he



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was travelling in a tractor cum trailer bearing Regn.No.TN-41-L-7196

along with the agricultural products belonging to the appellant in C.M.A.No.495 of 2015 and insured with the appellant in C.M.A.No.2944 of 2011. At that time, the vehicle driven by the first respondent in the claim petition, who is another workman of the owner of the offending vehicle. When the vehicle was proceeding from Setthumadai to Pollachi main road towards south to north near premier mill Devipattinam, due to the rash and driving of the driver, the claimant was thrown away from the tractor, thereby, the claimant's left leg got behind the wheels and sustained bone fracture. Immediately, he was admitted as inpatient in Coimbatore Medical College hospital. Due to the accident, his left leg was amputated.

(ii) It is the claimed by the claimant that he was working as agricultural coolie and earning a sum of Rs.3,000/- p.m. He was aged about 22 years and because of the amputation on his left leg, he has lost his earning capacity. Therefore, he filed claim petition seeking compensation of Rs.3,00,000/-.

(iii) Both the insurance company and the owner of the offending vehicle filed respective counter denying their liability to pay compensation.



WEB COPY 6. Before the Tribunal, the claimant had examined two witnesses viz., P.W.1 and P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 2 documents viz., Ex.R.1 and Ex.R.2. The Tribunal, after hearing the parties and perusing the materials produced before it, held that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle and awarded a sum of Rs.2,90,000/-, directing the insurance company to pay the same and thereafter, recover the same from the owner of the offending vehicle. Aggrieved by the same, both the insurance company as well as the owner of the offending vehicle filed the present appeals.

7. Learned counsel appearing for the appellant in C.M.A.No.2944 of 2011/insurance company submitted that, the insurance company has let in evidence through R.W.1, Junior Assistant of the Pollachi Regional Transport Office, to show that the driver of the tractor did not possess valid driving licence and thereby, he breached the policy conditions. Therefore, he submitted that the insurance company cannot be fastened with entire liability to pay the entire compensation to the claimant.

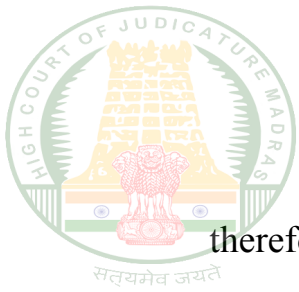


WEB COPY 8. Per contra, learned counsel appearing for the appellant in C.M.A.No.495 of 2015/owner of the offending vehicle submitted that, the claimant was in an inebriated condition and thereby, he fell down from the tractor and therefore, he had contributed for the accident. Therefore, the owner of the offending vehicle is not liability to pay any compensation. Since the vehicle was insured with the insurance company, the entire liability should be fastened only on the insurance company. Accordingly, he prays for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant in both the appeals and also perused the materials available on record.

10. The core issue that has to be decided in these appeals is whether the Tribunal is correct in directing the insurance company to pay the compensation amount to the claimant and thereafter, recover the same from the owner of the offending vehicle.

11. The main argument of the insurance company is that the driver of the offending vehicle did not possess valid driving licence and



therefore, they should not be fastened with any liability and if at all any compensation has to be paid, it has to be paid only by the owner of the offending vehicle. The insurance company, however, has not denied that the fact that the offending vehicle was insured with them.

12. The owner of the offending vehicle has taken a strong objection to the order of the Tribunal directing the insurance company to recover the compensation amount from him. According to him, the vehicle was insured with the insurance company and there is a separate loss covering the third party liability also. Therefore, the insurance company is well liable to pay the compensation, however, the Tribunal erred in further permitting the insurance company to recover the compensation amount from the owner of the offending vehicle.

13. The Tribunal, on the basis of the evidence of R.W.1, the Junior Assistant of Pollachi Regional Transport Office, who had deposed that there is no driving licence issued to the driver of the offending vehicle, had accepted the said evidence and held that the appellant in C.M.A.No.495 of 2015/owner of the offending vehicle, had, knowing fully well that the driver did not possess valid driving licence had



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allowed the driver to drive the vehicle and, therefore, he had violated the policy conditions and, therefore, the Tribunal had directed the insurer to pay the compensation and recover the same from the owner of the offending vehicle.

14. This Court is at a loss to comprehend the reasoning of the Tribunal with regard to non-possession of driving licence by the driver of the offending vehicle. It is alleged by the insurer that the driver of the offending vehicle did not possess a driving licence and had examined R.W.1, the Junior Assistant of the Pollachi Regional Transport Office. However, it is to be pointed out as to how the insurer had come to the conclusion that the driver of the offending vehicle could not have possessed a driving licence by obtaining the same from any other Regional Transport Office. The manner in which the insurer had come to the conclusion that it is only from Pollachi Regional Transport Office, if at all, the driver of the offending vehicle could obtain a driving licence and if no driving licence had been issued by the Regional Transport Office, Pollachi, the driver of the offending vehicle would not have been issued with a driving licence by any other Regional Transport Office across the State. In the absence of any proper and clear reasoning to



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come to the said conclusion with regard to the driving licence of the driver of the offending vehicle, which has been placed before the Court by the insurer to establish that across all the Regional Transport Offices in the State, no driving licence has been issued to the driver of the offending vehicle, the finding of the Tribunal merely on the basis of the evidence of R.W.1 that no driving licence had been issued to the driver of the offending vehicle through Pollachi Regional Transport Office is wholly erroneous as the said evidence could at best be considered to the extent that Pollachi Regional Transport Office had not issued any driving licence to the driver of the offending vehicle and it cannot be taken to mean that the driver of the offending vehicle has not been issued with any driving licence by any Regional Transport Office across the State.

15. In the aforesaid backdrop, the finding of the Tribunal that the driver of the offending vehicle was not possessed of a driving licence, which factum was known to the owner of the offending vehicle and knowing the same he had allowed the driver of the offending vehicle to drive the vehicle and, therefore, the insurer cannot be made liable to pay the compensation is wholly perverse and erroneous and, therefore, the said finding deserves to be set aside.



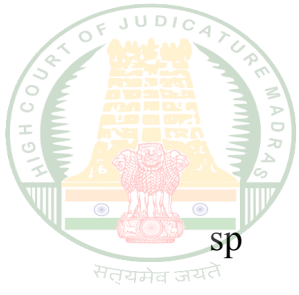
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WEB COPY 16. Accordingly, the award of the Tribunal, permitting the appellant in C.M.A.No.2944 of 2011 to recover the compensation amount from the appellant in C.M.A.No.495 of 2015 is set aside. The appellant in C.M.A.No.2944 of 2011/insurance company is directed to deposit the award amount to the credit of M.C.O.P.No.937 of 2006 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the same, directly to bank account of the claimant/1st respondent in both the appeals, through RTGS within a period of two (2) weeks thereafter.

17. In the result, C.M.A.No.2944 of 2011 is dismissed and C.M.A.No.495 of 2015 is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.01.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No



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To

The Motor Accidents Claims Tribunal (Principal Subordinate Judge) at
Coimbatore.



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M.DHANDAPANI, J.,

sp

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