



CMA.(MD)No.373 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	10/10/2025
Date of Pronounced	12/12/2025

CORAM

The Hon'ble Ms.Justice **R.POORNIMA**

CMA(MD)No.373 of 2009

K.V.Ashok Kumar : Appellant/Petitioner

Vs.

1.S.Pushpam
2.Branch Manager,
National Insurance Company,
No.24, Kamaraj Nagar,
Bodinaickenur,

3.Branch Manager,
Oriental Insurance Company,
Trichy.

: Respondents/Respondents

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 09/07/2008 passed in MCOP No.59 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.2), Trichirappalli.



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For Appellant : Mr.V.Alex Benny Hook

For 1st Respondent : No appearance

For 2nd Respondent : Mr.A.Ilango

For 3rd Respondent : Mr.C.Karthik

J U D G M E N T

This Civil Miscellaneous Appeal is preferred against the award, dated 09/07/2008 passed in MCOP No.59 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.2), Trichirappalli.

2.The brief case of the claimant are as follows:-

On 19/07/2022, a Lorry No.TN-32-Z-2799 belonged to the petitioner was carrying 12,000 Kilo Liter (12 KL) kerosene worth about Rs.1,53,000/- from Seven Seas Petroleum Pvt. Co., Chinnamumappanpatti, Virudhunagar Taluk to Sri Jothi Traders located at Mudaliyar Chathiram, Trichy. While proceeding on the way to Manaparai-Trichy main road, near Maravanur, a Lorry No.TN-69-7504 belonged to the 1st respondent loaded with iron rods dashed against the Tanker Lorry. In that process, the tanker lorry dashed against a tamarind tree and capsized, which caused the wastage of the whole 12,000 liters of



kerosene on the ground and severe damages to the front glass as well as the container of the tanker lorry.

3.Claiming compensation of Rs.3,00,000/-, the claimant has filed this claim petition before the Tribunal.

4.The second respondent Insurance Company filed a counter denying the entire allegation contained in the claim petitions; the coverage of policy on the date of the alleged accident is specifically denied by this respondent; there was no contract between the petitioner and this respondent on the date of the accident and therefore, this respondent is unnecessary party to the proceedings; The petition is bad for non-joinder of the insurer on his own vehicle; the petitioner is not the owner of the goods and hence, The petitioner is not entitled to get compensation for the alleged loss; As far as the damage to the vehicle is concerned, the insurer of the vehicle is responsible and the petitioner cannot claim the same and prayed for dismissal of the claim petition.

5. The third respondent filed a separate counter stating that the driver of the lorry bearing Registration No.TN-69-7504 was solely responsible for the accident and that the petitioner is the owner of the



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tanker lorry and it was insured on the date of the accident and so, they are not necessary party to this proceedings and the petitioner has submitted a claim form and this respondent, on 19/12/2002 has settled the claim of own damage for Rs.56,000/- and the petitioner has received the same in full and final settlement and therefore, the petitioner cannot claim any amount from this respondent as damages sustained to his vehicle and it is specifically denied that the petitioner has paid a sum of Rs.1,53,000/- being the vale of the kerosene to one Vijayakumar and prayed for dismissal of the claim petition against them.

6. Before the Tribunal, on the side of the claimant, 4 witnesses were examined as P.W.1 to P.W.4 and 12 documents were marked as Exs.P1 to P12. On the side of the respondents, 2 witnesses were examined as R.W.1 and R.W.2 and 2 documents were marked as Exs.R1 and R2

7.After considering the material evidence and records, the Tribunal has dismissed the claim petition filed by the claimant.

8.Aggrieved over the order of the Tribunal, this Civil Miscellaneous Appeal has been preferred by the claimant.



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9. The learned counsel for the appellant contended that the accident dated 19.07.2002 occurred solely due to the rash and negligent driving of the 1st respondent's driver, as evidenced by the complaint lodged by the appellant and the FIR registered in Crime No.438/2002 and the appellant's tanker lorry, carrying 12,000 liters of kerosene from Seven Seas Petroleum Pvt. Ltd., overturned after being hit by the 1st respondent's vehicle, resulting in total spillage of the kerosene and extensive damage to the vehicle; that the kerosene consignment originally belonged to one Vijayakumar of Sri Jothi Traders; however, subsequent to the accident, the appellant reimbursed the said value of Rs.1,53,000/- to Vijayakumar and thereby became the owner of the goods and that Exs.P3 and P4 were relied upon to substantiate such ownership and to establish the appellant's entitlement to claim compensation as the "owner of the property" under Section 166(1)(b) of the Motor Vehicles Act. It is further argued that the tanker lorry suffered repair expenses amounting to Rs.1,28,000/-, of which only Rs.53,000/- was settled by the insurer, leaving an outstanding loss of Rs.75,000/- and in addition, the appellant suffered loss of income of Rs.50,000/- owing to the vehicle remaining idle during the six-month repair period and thus, the total loss suffered was Rs.3,03,000/-, though only Rs.3,00,000/- was claimed.



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10. It is further submitted that the Tribunal erroneously relied on the decision reported in 2003 (1) CTC 156 (United India Insurance Co. Ltd. v. Tiruvallur Transport Corporation) and the said judgment is not applicable to the present case, because the property damaged was that of a third party at the time of accident, and after compensating the said party, the appellant became the owner of the goods and therefore, qualified to maintain a claim before the MACT. Hence, the rejection of the claim on the ground of maintainability is un-sustainable in law and prays for setting the order of the Tribunal and the respondents be directed to pay a sum of Rs.3,00,000/- towards the loss of kerosene, vehicle damage, and consequential loss of income, together with interest.

11. This Court considered the rival submission of the learned counsel appearing on either side and perused the materials available on record.

12. Exhibit P8 is the certificate issued to the appellant to carry petroleum products, Ex.P12 is the license to transport petroleum class A or petroleum class B in bulk on lands by mechanically in appellants vehicle. Ex.P4 is the invoice shows that 12 kiloliters of kerosene



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products sold to Sri Jyothi Traders for a sum of Rs.1,53,000/- on 19.07.2002, Ex.P2 and Ex.P3 are the receipts issued by the Sri Jyothi Traders to the appellants for the receipt of payment from the appellant. The insurance policy was marked under Ex.R2 shows that it covers risk of third-party damages.

13. Ex.P1, FIR was registered against the driver of the first respondent for negligent driving of the vehicle who was examined as R.W.1 admitted that after the accident, he fled away from the place of occurrence and later surrendered before the police station. The insurance company attributed fault to the appellant's driver for the accident, but no complaint whatever was filed against him. The negligence has already fixed on the driver of the first respondent. It was admitted that the petroleum products were being transported in the claimant's vehicle. It stands established that the goods were damaged due to the negligence of the driver of the offending vehicle.

14. According to the insurance company, the appellant is not the owner of the petroleum products and therefore, the only original owner is entitled to claim compensation. The original owner of the stock was examined as P.W.2 and he admitted that he had received the entire



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amount of Rs.1,53,000/- towards kerosene products damaged in the accident from the appellant and issued Ex.P2 and Ex.P3 receipts evidencing the same.

15. In the present case, the appellant has paid the entire loss to the original owner of a petroleum stock as evidence by the receipts issued by the said owner who was admitted, having received, full reimbursement for the kerosene damaged in the accident. Having compensated the original owner, the appellant has effectively stepped into his shoes and is entitled to recover the amount from the insurance company. In this context, Section 69 of the Indian Contract Act 1872, is attracted as it provides that a person who is interested in making the payment of money which another is bound by law to pay, is entitled to be reimbursed by the other. Therefore, upon satisfying the liability the original owner, the appellant becomes entitled to be reimbursed by the others and acquires a statutory right of reimbursement and thereby being legally competent to maintain the present claim.

16. The appellant paid the original owner of the stock, for the loss sustained by him, therefore, the appellant is entitled to seek indemnification from the insurance company by stepping into shoes of



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with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the amount to the credit of MCOP No.59 of 2003 on the file of the Motor Accidents Claims Tribunal/Additional District Judge (Fast Track Court No.2), Trichirappalli within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount along with proportionate interest and costs by filing appropriate application before the Tribunal. No costs.

12.12.2025

Index:Yes/No
Internet:Yes/No

To

- 1.The Motor Accident Claims Tribunal/
Additional District Judge (Fast Track Court No.2),
Trichirappalli.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J

er/rm

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