BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)Nos.1861 and 1862 of 2022
and
C.M.P.(MD)Nos.8380 and 8384 of 2022
and
C.M.A.(MD)No.813 of 2022
and
C.M.P.(MD)No.7528 of 2022

C.R.P(MD)Nos.1861 and 1862 of 2022:

Bajaj Allianz General Insurance Company Ltd.,
No.184/25, K.P.S.Shopping Arcade,
By-Pass Road, Madurai,
Represented by the Manager ... Petitioner in both petitions

Vs.

1.Sumathi
2.Muthu Lakshmi
3.Elavarasan ... Respondents in C.R.P.(MD)No. 1861/2022

1.Nivetha
2.Muthu Lakshmi
3.Elavarasan ... Respondents in C.R.P.(MD)No. 1862/2022

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the decree and judgment in M.C.O.P.Nos.128 and 114 of 2020 dated 20.01.2022 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court No.III), Tiruchirappalli.

In both petitions:

For Petitioner	: Mr.N.Shylappa Kalyan
For R1	: Mr.N.Sudhakar Nagaraj
For R2	: No Appearance

C.M.A.(MD)No.813 of 2022:

Bajaj Allianz General Insurance Company Ltd.,
No.184/25, K.P.S.Shopping Arcade,
By-Pass Road, Madurai,
Represented by the Manager. ...Appellant

vs.

1.Thiyagarajan
2.Muthu Lakhsmi
3.Elavarasan ...Respondents

PRAYER: Civil Miscellaneous Appeal - filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment in M.C.O.P.No.113 of 2020 dated 20.01.2022 on the file of the Motor Accident Claims Tribunal (Additional Sub Court No.III), Tiruchirappalli.

For Appellant	: Mr.N.Shylappa Kalyan
For R1	: Mr.N.Sudhakar Nagaraj
For R2	: No Appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeal and the Civil Revision Petitions are filed challenging the judgment in M.C.O.P.Nos.128, 114 and 113 of 2020 dated 20.01.2022 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Court No.III), Tiruchirappalli.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court/Tribunal in the claim petition.

3.The brief facts leading to the filing of these Civil Revision Petitions and the Civil Miscellaneous Appeal are as follows:

(i)On 25.11.2018 at about 09.05 p.m., the claimants have travelled as passengers in an auto insured with the Insurance Company bearing registration No.TN-48-P-9285 in Trichy -Karur highways from east to west on the extreme left side of the road and abiding the traffic rules. At that time, the third respondent car bearing registration No.TN-88-C-3087, which was driven in a rash and negligent manner, dashed against the auto, in which the claimants have sustained injuries. Thereafter, they filed their respective claim petitions before the trial Court/Tribunal. The trial Court /Tribunal has arrived at a conclusion and fixed contributory negligence both on the auto, insured with the petitioner as well as the third respondent's car. Further, the trial Court/Tribunal has directed the Insurance Company to pay the entire compensation to the claimants first and then recover the same from the third respondent.

4.The learned counsel for the Insurance Company submits that initially, the first respondent in the Civil Miscellaneous Appeal, namely Thiyagarajan made a complaint before the Law Enforcing Agency in Crime No.90 of 2018 alleging that the entire negligence is on the part of the third respondent, driver of the Car. Thereafter, the claimants realized that the said Car was not validly insured. Hence, in the trial, they claimed that the negligence is on both the driver of the auto and the third respondent's car. The Insurance Company has summoned R.W.1, driver of the auto, who has clearly deposed the manner in which the accident was happened to disprove the contentions of the claimants. Even thereafter, the trial Court/Tribunal has fixed 50% liability on the petitioner and 50% liability on the third respondent. Further, even though 50% liability is fixed on the Insurance company, the Court has directed the Insurance Company to pay the entire compensation initially and then recover it from the third respondent. When the Insurance Company is liable for paying 50% of the compensation, there is no provision for the Company to pay the entire compensation and then recover from the third respondent, who has not had any valid insurance. Hence, he prayed for appropriate orders.

5.Per contra, the learned counsel appearing for the claimants submits that the claimants have travelled as passengers in the auto insured with the petitioner/appellant Insurance Company. The examination of the driver of the auto will not be sufficient to hold that the entire negligence is on the part of the third respondent. R.W.1, driver of the auto, is the interested person being insured with the petitioner/appellant Insurance Company and hence, his evidence will not be sufficient to hold that the third respondent is wholly responsible for the accident. Further, the claimants have examined themselves as witness before the trial Court/Tribunal. To disprove the fact that the driver of the auto is also equally responsible for the accident, no independent witnesses was examined by the Insurance Company. Thereby, the trial Court/Tribunal has rightly fixed the liability as against the third respondent as well as the Insurance Company. The said judgment passed by the trial Court/Tribunal need not be interfered.

6.Heard the learned counsel for the Insurance Company as well as the claimants and perused the materials placed on record.

7.Though notice has been served and name of the second respondent is printed in the cause list, none appeared on his behalf. The notice sent to the third respondent is returned with an endorsement 'addressee left without instructions'.

8.The facts in the present case are not in dispute. Perusal of the entire records reveals that the claimants have travelled as passengers in an auto insured with the petitioner/appellant Insurance Company. The same was owned by the second respondent. The petitioner/Insurance Company claims that initially, FIR was registered as against the third respondent's car. However, during trial, the claimants made allegations against the driver of the auto, in which they have travelled. Based upon their averments, the trial Court/Tribunal fixed 50% liability on the petitioner/appellant Insurance Company.

9.It is to be noted that in order to disprove the allegations made by the claimants that the driver of the auto is also equally responsible for the accident, the Insurance Company examined the driver of the auto, insured with the petitioner/Appellant Insurance Company as R.W.1. The driver of the auto is an interested person, who made that accident with the third respondent. Hence, his evidence alone will not be sufficient to fix the entire liability on the third respondent. The Insurance Company did not examine any independent witnesses before the trial Court/Tribunal in respect of its contention. The witnesses examined on the side of the Insurance Company are the official witnesses. In the absence of any independent witness, the trial Court fixed 50% negligence as against the petitioner as well as the third respondent and the same need not be interfered.

10.However, the trial Court/Tribunal erred in directing the petitioner/appellant Insurance Company initially to pay the entire compensation and then recover the same from the third respondent. It is an undisputed fact that there is no contract between the petitioner/appellant Insurance Company and the third respondent. In the absence of any contract between the petitioner/appellant Insurance Company and the third respondent, it is not possible for the petitioner/appellant Insurance Company to recover the amount from the third respondent. Hence, the direction issued by the trial Court directing the petitioner/appellant Insurance Company initially to pay the entire compensation and then recover from the third respondent, alone is hereby set aside. All the other directions issued by the trial Court/Tribunal hereby remain unaltered.

11.The petitioner/appellant Insurance Company is directed to deposit 50% of the respective compensation amount to the credit of M.C.O.P.Nos.128, 113 and 114 of 2020 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court, III), Tiruchirappalli along with the interest as fixed by the trial Court/Tribunal within a period of four weeks from the date of receipt of a copy of this order, less the amount, already deposited. On such deposit, the claimants are permitted to withdraw said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. The claimants are also directed to recover the compensation amount from the third respondent in accordance with law.

12.With the above direction, the Civil Revision Petitions and the Civil Miscellaneous Appeal are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

23.07.2025

Index : Yes/No
Internet : Yes / No
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To

1.The Motor Accidents Claims Tribunal
(Additional Sub Court, III),
Tiruchirappalli

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

M.DHANDAPANI,J.

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C.R.P.(PD)(MD)Nos.1861 and 1862 of 2022
and
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