BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.03.2025

Pronounced on : 12.03.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Rev.Aplc.(MD)No.34 of 2025
in
C.M.A(MD)No.1025 of 2017

Ramuthai ...Petitioner/1st Respondent/Petitioner

Vs

1.The Branch Manager,
National Insurance Company Limited,
No.5A, Sub Collector Office Road,
District Court Complex,
Dindigul District. ...Respondent/Appellant/3rd Respondent

2.M.Sangeetha ...Respondent/2nd Respondent/1st Respondent
3.Murrugesan ...Respondent/3rd Respondent/1st Respondent

PRAYER: Review Application is filed under Order 47 Rule 1 & 2 r/w Section 114 of C.P.C., against the judgment and decree made in C.M.A.(MD)No.1025 of 2017 on the file of this Court, dated 01.06.2023.

For Petitioner : Mr.R.Santhanam

For Respondents : Mr.J.S.Murali for R1

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ORDER

The instant review petition has been filed seeking to review the order passed by this Court, dated 01.06.2023 in C.M.A.(MD)No.1025 of 2017.

2.A claim petition was filed in M.C.O.P.No.2 of 2015, before the Motor Accident Claims Tribunal, Dindigul, by a passenger of an Auto seeking compensation on the ground that due to the composite negligence on the part of the auto driver and the driver of the offending vehicle, namely, Bolero car, the accident had taken place.

3.The tribunal had found that the accident had taken place solely due to the negligence on the part of the driver of the Bolero car. However, proceeded to fix 10% of the composite negligence on the part of the auto driver on the sole ground that he did not possess a badge to drive the LMV vehicle at the relevant point of time. The Auto was insured with the appellant insurance company and the Bolero car was not insured at the time of accident.

4.The tribunal had directed the insurance company to pay the entire compensation and recover 90% of the award amount from the owner of the Bolero car. This award amount was put to challenge by the appellant insurance company, contending that when there is no negligence on the part of the auto driver, 10% composite negligence ought not to have been mulcted upon the auto driver.

5.This Court after considering the submissions made on either side and after perusal of the records, arrived at a finding that the tribunal has not given any finding that the accident has taken place due to the negligence on the part of the auto driver. However, 10% of composite negligence was fixed on the auto driver on the sole ground of non-possession of a badge. After relying upon the judgment of the Hon'ble Supreme Court reported in ***2017 (14) SCC 663, (Mukund Dewangan Vs. Oriental Insurance Company Limited),*** this Court has held that non-possession of a badge for LMV vehicle cannot be considered to be breach of policy conditions. In such circumstances, this Court has proceeded to fix the entire liability upon the driver of the Bolero car. When the negligence is solely attributable to the driver of the Bolero car, there is no question of composite negligence or directing the insurance company to pay the entire award amount and thereafter, recover 90% of the award amount from the owner of the Bolero car. Based upon the said findings, this Court had allowed the appeal filed by the insurance company and completely exonerated the insurance company.

6.The present review application has been filed by the claimant contending that in the cases of composite negligence, the claimant would be entitled to proceed as against any one of the tortfeasors for recovering the compensation amount. In such circumstances, this Court had committed an error apparent on the face of the record by exonerating the insurer of the auto.

7.Only when there are two tortfeasors, on the ground of composite negligence, the claimant would be entitled to proceed as against anyone of the tortfeasors. Even as per the findings of the tribunal, the accident has taken place solely due to the negligence on the part of the driver of the Bolero car. However, the tribunal has erroneously proceeded to fix 10% of the liability upon the auto driver on the sole ground that the auto driver did not possess a badge. When negligence is not attributable to the auto driver, this Court has arrived at a finding that there is no composite negligence and the only tortfeasor, is the driver of the Bolero car.

8.In view of the above said findings, this Court has exonerated the insurer of the auto and has mulcted the entire liability upon the owner of the Bolero car. Therefore, the judgment of the Hon'ble Supreme Court reported in ***2015 ACJ 1441 (Khenyei Vs. New India Assurance Company Limited and Others)*** is not applicable to the facts of the present case.

9.The grounds raised in the review application clearly indicate that there is no error apparent on the face of the record, but the entire appeal is being re-argued on merits under the guise of review application. In such circumstances, the ingredients under order 47 Rule 1 of C.P.C. have not been satisfied and there are no merits in the review application. Accordingly, this review application stands dismissed. No costs.

12.03.2025

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

R.VIJAYAKUMAR, J.

RJR

Pre-delivery order made
in
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in
C.M.A(MD)No.1025 of 2017

12.03.2025