

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Miscellaneous Appeal No.392 of 2016

M.Chinnasamy . . . Appellant/Claimant

vs.

1.R.Madhu

2. A.G.Murugan

3. The New India Assurance Company Ltd.,

rep. by its Branch Manager,

Tirupattur Branch

Tirupattur, Vellore District

..Respondents/Respondents

(Respondents 1 & 2 were exparte before
the Lower Court and hence CMA against
respondents 1 & 2 is not pressed)

Civil Miscellaneous Appeal is filed under Section 173 of
Motor Vehicles Act, 1988 against the fair and decreetal order
dated 19.12.2011 passed in M.C.O.P.No.453 of 2007 on the file of
the Motor Accidents Claims Tribunal cum Fast Track Court
(Additional District Judge), Dharmapuri.

For appellant : Mr.R.Selvakumar

For respondents : Mr.R.Neethi Perumal (R3)

JUDGEMENT

(Judgment of the court was delivered by R.SUDHAKAR,J.

This Civil Miscellaneous Appeal is filed by the injured
claimant seeking modification of the award dated 19.12.2011 passed
in M.C.O.P.No.453 of 2007 on the file of the Motor Accidents
Claims Tribunal cum Fast Track Court (Additional District Judge),
Dharmapuri.

2. It is a case of injury. On 05.05.2006, the claimant and
his friends were returning to their house in the Tata Sumo bearing
Registration No.TN-60-Z-5225. When the driver of the said Tata
Sumo was driving on the left side of the road, near Maakan Kottai-

Chikkarthanahalli to Muniappan Kovil area on Palacode-Kaveripattinam Road, at that time, an Eicher Van bearing Registration No.TN-23-W-5157, belonging to the 1st respondent insured with the 3rd respondent, which was driven in a rash and negligent manner, dashed against the back side of the Tata Sumo, which resulted in an accident. In that accident, the claimant sustained injuries and thereafter, he was given treatment. The injured/claimant has filed a claim petition before the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Dharmapuri, in M.C.O.P.No.453 of 2007, claiming compensation to the tune of Rs.15,00,000/-.

3. In support of the claim petition, the claimant himself was examined as P.W.1 and Dr.R.Sakthivel was examined as P.W.2. Documents Ex.P1 to P11 were marked, the details of which are as follows:-

Ex.No.	Details
P1	FIR
P2	Wound certificate
P3	Discharge summary
P4	Copy of the insurance policy of Eicher Van
P5	Driving licence of the driver of Eicher Van
P6	R.C.Book of Eicher Van
P7	Driving licence of the driver of Tata Sumo
P8	Medical Bills
P9	X ray
P10	X rays
P11	Disability certificate

On behalf of the respondents, One Sivaprakasam was examined as R.W.1 and four documents were marked the details of which are as follows:-

Ex.No.	Details
D1	TN 23 W 5157 copy of insurance policy of Eicher Van
P2	TN 23 W 5157 Seizure report of Eicher Van
P3	letter to respondents 1 and 2
P4	acknowledgements for having received the letter by R1 &2

4. The Tribunal, based on oral and documentary evidence on record, held that the accident was due to the rash and negligent driving on the part of the rider of the offending

vehicle and therefore, the 1st and 2nd respondents are held liable to pay compensation to the tune of Rs.9,94,708/- to the claimant, by giving a finding that the Insurance Company is not liable to compensate the claimant. Challenging the same, the claimant has come before this Court.

5. The learned counsel for the injured/claimant contended that the claimant seeks modification of the award only in respect of the finding of the Tribunal that the Insurance Company is not liable to compensate the injured/claimant on the ground that the vehicle did not have valid permit.

6. This Court considered the submissions made by the learned counsel for the appellant/claimant and the learned counsel for the Insurance Company and perused the materials available on record. Respondents 1 and 2 remained *exparte* before the Tribunal and hence notice to them is dispensed with.

7. It is not in dispute that the offending vehicle had a valid policy on the date of the accident, however, there is no valid permit, which breaches the provisions of the Motor Vehicles Act. In such a situation, the Tribunal ought to have directed the Insurance Company to pay the compensation and thereafter recover the same from the owner of the vehicle.

8. At this juncture, it is useful to refer to the dictum laid down by the Hon'ble Apex Court in the case of Kamala Mangalal Vayani and others vs. United India Insurance Company Limited and others reported in 2010 ACJ 1441; Judgment rendered by this Court in the case of Velammal and others vs. P.Kanagu and others reported in 2006 ACJ 1039 and the Judgment rendered by this Court in the case of Divisional Manager, United India Insurance Co. Ltd., vs. S.Sowkath Ali and others reported in 2010 ACJ 1726.

9. Following the decision of the Hon'ble Supreme Court and also the earlier decisions of this Court referred to above, we hold that the Insurance Company is liable to pay the compensation to the claimant, however, it will be entitled to recover the same from the owner of the vehicle.

10. Accordingly, the Civil Miscellaneous Appeal filed by the Claimant is allowed insofar as the finding of the Tribunal that the Insurance Company is not liable to compensate the claimant. The Insurance Company is directed to deposit the compensation as awarded by the Tribunal along with interest at 7.5% per annum to the credit of M.C.O.P.No.453 of 2007 on the file of the Motor Accidents Claims Tribunal cum Fast Track Court (Additional District Judge), Dharmapuri. within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is permitted to withdraw the same on filing necessary application before the Tribunal.

There will be no order as to costs in this appeal.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rg

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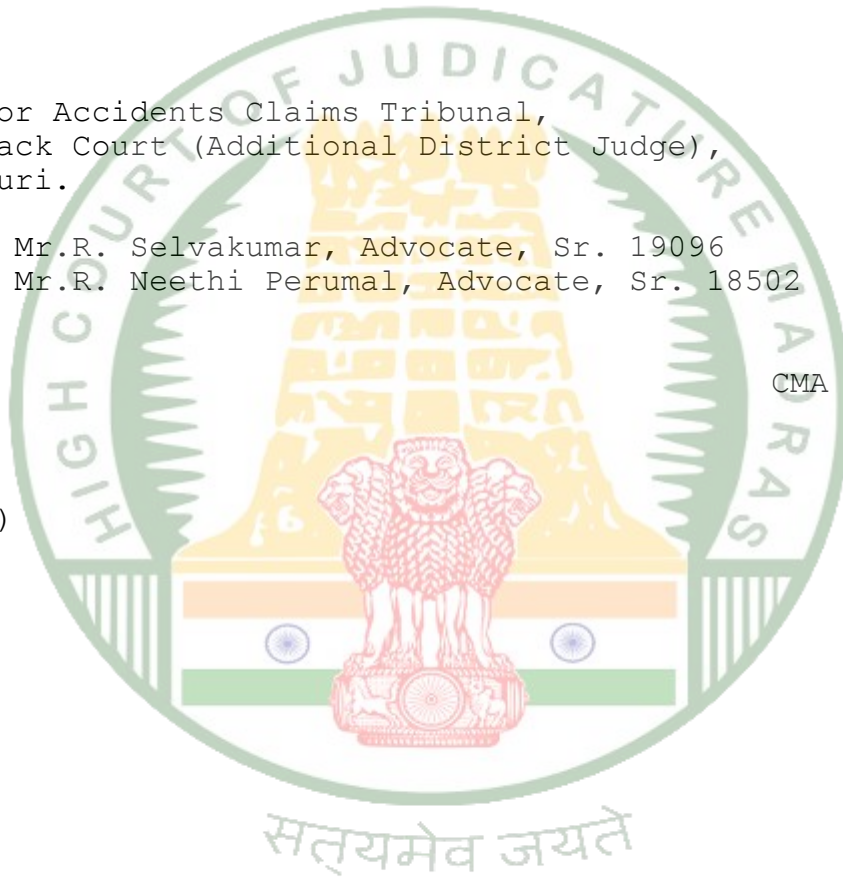
The Motor Accidents Claims Tribunal,
Fast Track Court (Additional District Judge),
Dharmapuri.

1 cc to Mr.R. Selvakumar, Advocate, Sr. 19096

1 cc to Mr.R. Neethi Perumal, Advocate, Sr. 18502

CMA No. 392 of 2016

TEJ (CO)
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