

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.625 of 2014

M/s ICICI Lombard General
Insurance Company Ltd.,
Branch Manager
Branch Office
Salem

... Appellant/2nd Respondent

-vs-

1. Kanavapatti, S/o Muthaiyan

2. P.Kannaian ... Respondents/Petitioner & 1st Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.01.2012 made in M.C.O.P.No.147 of 2007 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant :: Mrs.R.Sree Vidhya

For Respondents :: Mr.N.E.A.Dinesh for
M/s V.Nicholas for R2
R1-Notice served

JUDGMENT

M/s ICICI Lombard General Insurance Company Limited, Salem, questioning the liability to pay a sum of Rs.70,550/- for the multiple injuries sustained by the claimant, has brought this appeal.

2. Learned counsel for the appellant submitted that when the claimant and other coolies were travelling in the Tractor-Trailer bearing Registration No.TN 24 B 1138 belonging to the second respondent, the said Tractor-Trailer was driven by its driver Mr.C.Govindasamy at about 7.45 A.M., the driver stopped the vehicle near the claimant's house in Thanampatti to Poosaripatti road so as to enable him to take breakfast. Before the first respondent alighted from the Tractor-Trailer, the driver moved the vehicle, as a result the claimant fell down

from the Tractor-Trailer and both of his legs were run over by the rear wheels of the Tractor-Trailer. On account of the same, the claimant sustained grievous injuries over his left and right foots, hip and third metatarsal bones of the right foot and also sustained multiple injuries all over his body. When the accident occurred only due to the rash and negligent driving of the driver of the Tractor-Trailer, the crucial point that needs consideration is that the said driver was not having a valid licence along with the badge endorsement. But the Tribunal, overlooking the said plea taken by the insurance company, has wrongly allowed the claim petition granting a sum of Rs.70,550/- along with interest at the rate of 7.5% per annum from the date of petition viz., 22.11.2006 till the date of realisation, without giving liberty to the insurance company to recover from the owner of the offending vehicle.

3. In reply, the learned counsel for the second respondent-owner of the Tractor-Trailer submitted that the contention of the learned counsel for the appellant insurance company that the driver of the Tractor-Trailer was not having a valid licence is without any basis, because, at the time of trial, when the insurance company filed the counter affidavit taking the said plea, both the driver and the owner of the vehicle had produced the copy of the valid driving licence possessed by the driver at the time of accident. This document has also been marked as Ex.P4. Therefore, taking a stand today before this Court that although there was a valid driving licence possessed by the driver, there was no badge endorsement, is only an after-thought to get over from the liability. Had the said question been taken before the Tribunal, the driver and the owner would have answered the same also, he pleaded.

4. I also find merits in the contention of the learned counsel for the second respondent. A reading of the counter affidavit filed by the insurance company before the Tribunal does not show anything about the badge endorsement not being possessed by the driver of the Tractor-Trailer. Therefore, hardly there was no chance for either the driver or the owner of the offending vehicle to meet that point before the Tribunal. Hence, in my considered opinion, it is not open to the insurance company to come to this Court taking a different stand. Secondly, the award amount also appears to be very less, namely, a sum of Rs.70,550/-. Therefore, this Court is not inclined to interfere with the impugned award. Accordingly, the civil miscellaneous appeal fails and it is dismissed. The learned counsel for the appellant fairly submitted that the entire award amount with accrued interest was already deposited before the Tribunal. Since the first respondent/claimant has not entered appearance before this Court, it is inferred that the claimant has withdrawn the entire compensation amount from the Tribunal.

Consequently, the interim order stands vacated and the M.P.No.1 of 2014 is also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

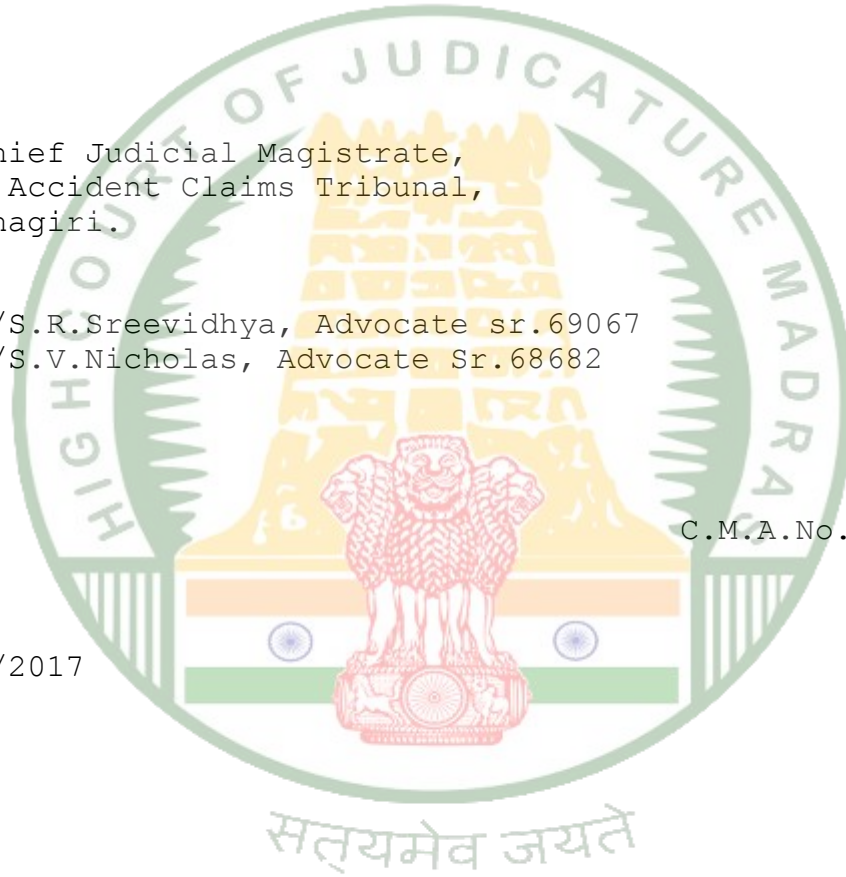
ss
To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

+1cc to M/S.R.Sreevidhya, Advocate sr.69067
+1cc to M/S.V.Nicholas, Advocate Sr.68682

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srg 04/01/2017



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