

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.7.2016

CORAM

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.No.3117/2010

M/s. ICICI Lombard General
Insurance Co. Ltd.
Delma Complex
Opp: Co-operative Hospital
Shornur Road
Thrissur

... Appellant/2nd Respondent

Vs.

1. S.Narayanaswamy
S/o. Subbiah Gounder
Near High School
Rotti Goundanoor
K.G. Chavadi
Coimbatore

... 1st Respondent/ Claimant

2. Prakashan
S/o. Nukunni
11, Tharuvakurissi
Kannadi
Palakkad

... 2nd respondent/1st respondent

Appeal filed under section 173 of Motor Vehicle Act , 1988
against the Judgment and Decree of the Motor Accident Claims
Tribunal (Additional District Judge) (Fast Track Court No.I) at
Coimbatore dated 23.04.2010 and made in M.C.O.P.No.293 of 2008

For Appellant :- M/s.R.Sreevidhya

For 1st Respondent:- Mr.V.Thillaisamy

J U D G E M E N T

Claiming a sum of Rs. 5 lakhs for the injuries sustained by
the 1st Respondent/ Claimant (herein after he may be referred to
as the Claimant) he had filed a claim petition in M.C.O.P. No.
293/2008 before the Motor Accidents Claims Tribunal (Additional
District Judge, FTC I at Coimbatore)

2. The facts which are very much essential for the disposal of this appeal may be summarized as follows:-

That on 22.12.2007 at about 7.15 p.m. near Jayaram Workshop at Coimbatore to Palakkad Main Road the 2nd respondent herein / owner of the vehicle had driven his motorcycle TVS Victor bearing Registration No. KL 09 V 2675 in a rash and negligent manner and dashed against the Claimant when he was crossing the road from south to north direction. On account of this reason he had fallen down and immediately removed to a private hospital at Madhukarai, Coimbatore.

At the time of accident the Claimant was aged about 65 years and working as a cooly and thereby earned a sum of Rs. 200/- per day. A criminal case in crime no. 326/2007 was registered on the file of Madhukarai Police Station under Section 279 337 IPC.

In the said accident the Claimant had suffered with a fracture over one third of his right leg fibula besides multiple injuries on all over his body. The 2nd Respondent herein being the owner of the vehicle did not contest the petition as he remained exparte. The appellant insurance company being the 2nd Respondent in the claim petition had contested the claim petition on the following two grounds :-

(i) The owner of the vehicle had driven the same without valid driving license

(ii) Since there was policy violation, the appellant insurance company is not liable to indemnify the loss suffered by the insured.

3. On appreciation of the evidences both oral and documentary and on considering the catena of decisions of the Apex Court as well as various High Courts on this line the Motor Accidents Claims Tribunal had found that 'admittedly the petitioner (Claimant) is the third party to Insurance Policy. At the time of accident the vehicle was insured with the 2nd Respondent and the policy was also in force. As per the reported rulings cited by the petitioner (Claimant) the insurance company should first pay the compensation amount to the Claimant/petitioner and recover the same at the later stage from the owner / the 2nd Respondent herein. So the above ruling is squarely applicable to the case on hand. If there is violation on either party it would not bind on the Claimant / petitioner. So the 2nd Respondent is liable to pay the compensation amount to the Claimant and recover the same from the owner of the vehicle without actually filing a suit. Accordingly the Tribunal had awarded a sum of Rs. 1,53,475/- towards the compensation in favour of the Claimant directing the appellant insurance company

to pay the same to the Claimant with interest at 6% p.a. from the date of claim petition i.e. from 3.3.2008 to 16.7.2009 and from 10.11.2009 till the date of payment with proportionate cost. The award amount shall be paid by the appellant insurance company within a period of 3 months.

4. This court has carefully examined the relevant facts and circumstances and found that the award passed by the Motor Accidents Claims Tribunal does not suffer from any infirmity and hence the 2nd Respondent insurance company is directed to pay the entire award amount along with the interest at the rate of 6% p.a. to the Claimant within a period of one month from the date of receipt of a copy of this order and recover the same from the 2nd Respondent herein / owner of the vehicle without actually filing a suit for recovery of money.

5. Soon after the deposit of entire award amount along with interest and proportionate cost before the Motor Accidents Claims Tribunal the 1st Respondent /Claimant is entitled to withdraw the entire amount along with the accrued interest and proportionate cost without actually filing a formal application seeking permission. With this direction the award passed by the Tribunal is confirmed and the appeal is dismissed. However there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa
To

The Additional District Judge,
Fast Track Court No.I, सतयमेव जयते
Motor Accident Claims Tribunal,
Coimbatore.

Copy To
The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

C.M.A.No.3117 of 2010

SV(CO)
CS/27/03/18