

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.3701 of 2004

1. A.Venkatachalapathy (Died)

2. Kanchana

3. Sowmiya

4. Vaisali

5. U.S.Annamalai

6. Thilagavathi

(Appellant 2 to 6 brought on record as
LR's of the deceased sole Appellant vide
Court order dated 15.11.2016 by GCJ in
CMP.221 to 223 of 2015)

.... Appellants/Petitioner

Vs.

1. M.Damodharan

2. The Manager,

Oriental Insurance Company Ltd.,

3rd Floor, No.8, Esplanade,

Chennai - 600 108.

.... Respondents /Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173
of the Motor Vehicles Act, 1988, against the order and decretal
order dated 09.09.2003 passed in MCOP No.440 of 1999 on the file
of Motor Accidents Claims Tribunal, Fast Track Court No.II
(Additional District Judge), Kancheepuram.

For Appellant : No Appearance

For R1 : No Such Address
(No appearance)

For R2 : Mr.G.Sukumari

J U D G M E N T

The appellant/claimant was not represented. However, the
learned counsel for the respondent/Insurance Company was present
to assist the Court.

2. It is a case, where in a road accident that had taken place on 27.02.1998, the claimant, who was travelling in a goods vehicle alongwith the goods, had suffered injury and moved the Motor Accident Claims Tribunal with the claim of Rs.2,00,000/-, whereas the Tribunal has passed an award for Rs.75,000/- inasmuch as the claimant was travelling in a goods carrier the Tribunal has absolved the Insurance Company [the second respondent] liability.

3. The only point arises in this appeal seems to be that instead of exempting the Insurance Company entirely from liability, the appellant/claimant was keen to raise an issue of applying doctrine of pay and recover of the case. The records of the Tribunal was perused. At the time when the accident took place the injured, an agriculturist, had taken the vegetables from his place to the vegetable market in Koyambedu. Therefore, it is the case where doctrine of pay and recover can be applied. Accordingly, the Civil Miscellaneous Appeal is allowed and the Insurance company is directed to pay the award amount at the first instance and recover the same from the first respondent/owner of the vehicle. The Insurance Company is directed to deposit the sum awarded by the Tribunal with interest at 9% per annum within four weeks from the date of receipt of copy of this order, less any amount, if any already deposited by the owner of the vehicle. Thereafter, the claimants are entitled to receive the same forthwith. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To:

1. Motor Accidents Claims Tribunal,
Fast Track Court No.II (Additional District Judge),
Kancheepuram.
2. The Manager,
Oriental Insurance Company Ltd.,
3rd Floor, No.8, Esplanade,
Chennai - 600 108.

3. The Record Keeper,
V.R.Section, High Court,
Madras.

+1cc to M/S.R.Sivakumar, Advocate Sr.71919

C.M.A.No.3701 of 2004

rsk[co]
srg 25/01/2017



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