



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2016
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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C.M.A. (MD) Nos.283 and 284 of 2015
and
M.P. (MD) Nos.1 and 1 of 2015

C.M.A.No.283 of 2015

Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office, 1, 3rd Floor,
Bangur Dharmasala Building,
6-A, West Veli Street, Madurai. .. Appellant/2nd Respondent

Vs.

1.Sivaprakash ..1st Respondent/Petitioner
2.A.R.Pothai Raj .. Respondents
(2nd Respondent remained exparte
before the lower Court) ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.41 of 2012, dated 16.10.2014, on the file of the Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate, Madurai.

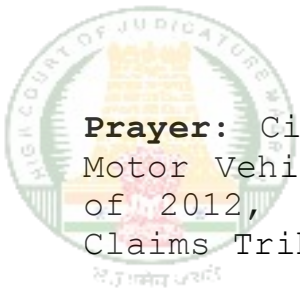
AND

C.M.A.No.284 of 2015

Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office, 1, 3rd Floor,
Bangur Dharmasala Building,
6-A, West Veli Street, Madurai. .. Appellant/2nd Respondent

Vs.

1.Rajkumar ..1st Respondent/Petitioner
2.A.R.Pothai Raj ..2nd Respondent/1st Respondent
(2nd Respondent remained exparte
before the lower Court)



Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.79 of 2012, dated 16.10.2014, on the file of the Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate, Madurai.

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For Appellants : Mr.K.Bhaskaran
in both the CMAs

For Respondents : Mr.K.K.Senthil (for R1)
in both the CMAs Mr.R.R.Kannan (for R2)

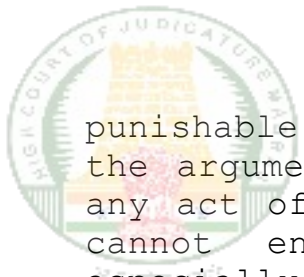
COMMON JUDGMENT

The appellant/Insurance Company filed the present C.M.A(MD) Nos.283 and 284 of 2015, challenging the award passed in M.C.O.P.Nos.41 and 79 of 2012 respectively, dated 16.10.2014, on the file of the Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate, Madurai.

2.It is the case of grievous injuries and accident took place on 27.01.2011 at about 22.30 hours in Madurai to Theni Main Road, near Atchampathu burial yard, Madurai District. The claimants sustained fracture and multiple injuries all over the body. The respondents / claimants have filed M.C.O.P.Nos.41 and 79 of 2012 respectively. The Tribunal considered the facts and circumstances of the case and passed an award granting a sum of Rs.2,44,440/- in MCOP.No.41 of 2012 and Rs.2,69,320/- in MCOP.No.79 of 2012. The appellant / Insurance Company preferred the present appeals against the two claims mainly on the ground that it is an admitted case of two pillion riders in a two wheeler and therefore, the percentage of contributory negligence fixed by the Motor Accident Claims Tribunal is erroneous and contrary to the settled principles of law by this Court as well as the Hon'ble Apex Court of India. The findings of the Tribunal is very clear that three persons were travelling in a two wheeler, which is not disputed by the other parties.

3.The contention of the learned counsel appearing for the respondents is that though there were two pillion riders, the negligence was caused by the opposite side vehicle and not by the respondents / claimants and therefore no contributory negligence can be fixed against the respondents / claimants.

4.Such an argument advanced by the learned counsel appearing for the respondents, deserves to be deprecated because this Court cannot encourage the act of the respondents / claimants for accommodating two pillion riders in a two wheeler, which is not permitted under the Motor Vehicles Act and in violation of the Traffic Regulation. It is a clear case where the respondents / claimants also have committed an act of offence, which is



punishable and therefore, this Court is not inclined to consider the argument that the respondents / claimants have not committed any act of contributory negligence for the accident. The Courts cannot encourage the offensive activities of the citizen especially while driving the motor vehicles and in such cases the compensation is to be awarded cautiously, especially to the persons committing offence under various Acts and Regulations. Hence, the argument advanced by the learned counsel appearing for the respondents / claimants is to be rejected in respect of the contributory negligence of the claimants.

5.The learned counsel appearing for the appellant though emphasized 50% contributory negligence to be fixed for the respondents / claimants, this Court is not inclined to accept the contention, in view of the fact that the respondents / claimants have not responsible for the accident took place. Therefore, this Court is inclined to discourage such activities of the citizens, who are committing traffic offences and violations. But, the compensation should be just and therefore 10% contributory negligence shall be fixed for the offence committed by the respondents / claimants.

6.Therefore, both the civil miscellaneous appeals are partly allowed and the 10% of the contributory negligence is fixed for the respondents / claimants and the award amount is modified, and 10% of the amount is to be deducted from the total compensation amount. Accordingly, Rs.24,000/- for MCOP.No.41 of 2012 and Rs.26,000/- for MCOP.No.79 of 2012 is reduced.

7.The learned counsel appearing for the appellant represented that the entire award amount had already been deposited and the respondents / claimants are permitted to withdraw the entire amount with accrued interest by deducting the amount of Rs.24,000/- in MCOP.No.41 of 2012 and Rs.26,000/- in MCOP.No.79 of 2012. The appellant is permitted to withdraw the remaining deposited amount with proportionate accrued interest by filing necessary application before the Tribunal, if any. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS-II)

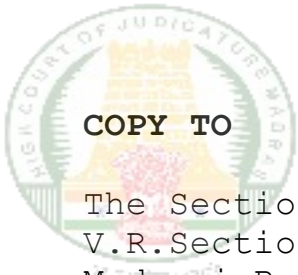
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Sub Assistant Registrar(C.S.)

To

The Chief Judicial Magistrate,

<https://hmcourtscorpusindia.org/> Madurai. Claims Tribunal cum Madurai.

**COPY TO**

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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+2cc to M/S.K.BHASKARAN, Advocate SR.No.66689&66690

+2cc to M/S.R.R.KANNAN, Advocate SR.No.66759&66760

+1cc to M/S.K.K.SENTHIL, Advocate SR.No.67086

vsa

MAS/MR-KKR/SAR1:18.07.2017:4P-7C

C.M.A. (MD) Nos.283 and 284 of 2015
and

M.P. (MD) Nos.1 and 1 of 2015
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