

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.KIRUBAKARAN

CMA.No.450 of 2015
and
M.P.No.1 of 2015

National Insurance Company Limited,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore.Appellant/2nd Respondent

/versus/

1 . P.Selvi1st Respondent/Petitioner

2 . S.Palani2nd Respondents/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment made in M.A.C.T. O.P.No.1424 of 2005 on 22.04.2010 on the file of the Motor Accident Claim Tribunal, II Additional Subordinate Court, Cuddalore.

For Appellant : M/s N.B.Surekha

For 1st Respondent : Mr.D.S.Thirumavalavan

For 2nd Respondent : Ex-parte before Tribunal

JUDGMENT

The appeal has been preferred by the Insurance Company against fixing the liability on the driver of the auto, insured with the appellant - Insurance Company and awarding Rs.2,03,000/- in favour of the first Respondent, who got injured in the accident, which occurred on 09.06.2005, when she was travelling in the auto, which dashed against a two wheeler.

2. Heard Mrs. N.B.Surekha, learned counsel appearing for the appellant and she would submit that the first respondent/victim was travelling in the auto and after the accident, though she has specifically stated in the complaint that the accident was due to the rider of the two wheeler, whereas, in the claim petition, she has shifted the blame on the driver of the auto. Further, the evidence of RW1 was not considered properly. Therefore, she seeks to absolve the Insurance Company of the liability.

3. However, a close scrutiny of the records would reveal that the victim was examined as PW1 and she has categorically stated that because of the rash and negligent driving of the auto driver, the accident was caused. No doubt, Ex.A1, First Information Report speaks about the rash and negligent driving of the two wheeler. The First Information Report cannot be taken as a whole truth and it is only a weak piece of evidence. When there is a contradiction between the First Information Report and the statement made before the court, weightage has to be given only to the evidence recorded before the court. Therefore, the Tribunal rightly fixed the liability on the driver of the auto, based on PW1's evidence and directed the Insurance Company to pay the compensation to the tune of Rs.2,03,000/-, which cannot be set aside.

4. It is contended that the first respondent/claimant suppressed the fact that the driver of the auto is her husband. Whether the auto driver is the husband of the victim or a third party, does not make any difference, when the victim's specific case is that because of the rash and negligent driving of the auto, the accident had occurred.

5. In fine, this Civil Miscellaneous Appeal is dismissed by confirming the judgment and decree passed in M.A.C.T.O.P.No.1424 of 2005 on 22.04.2010 on the file of the Motor Accident Claims Tribunal, (II Additional Subordinate Court), Cuddalore. The rate of interest at 7.5% p.a. is also confirmed. No costs. Connected Miscellaneous Petition is closed.

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6. The appellant is directed to deposit the entire award amount along with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of copy of this order, if not deposited already. On such deposit, the Tribunal is directed to transfer the entire compensation amount through RTGS, to the claimant, within a period of two weeks thereafter.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst/msm

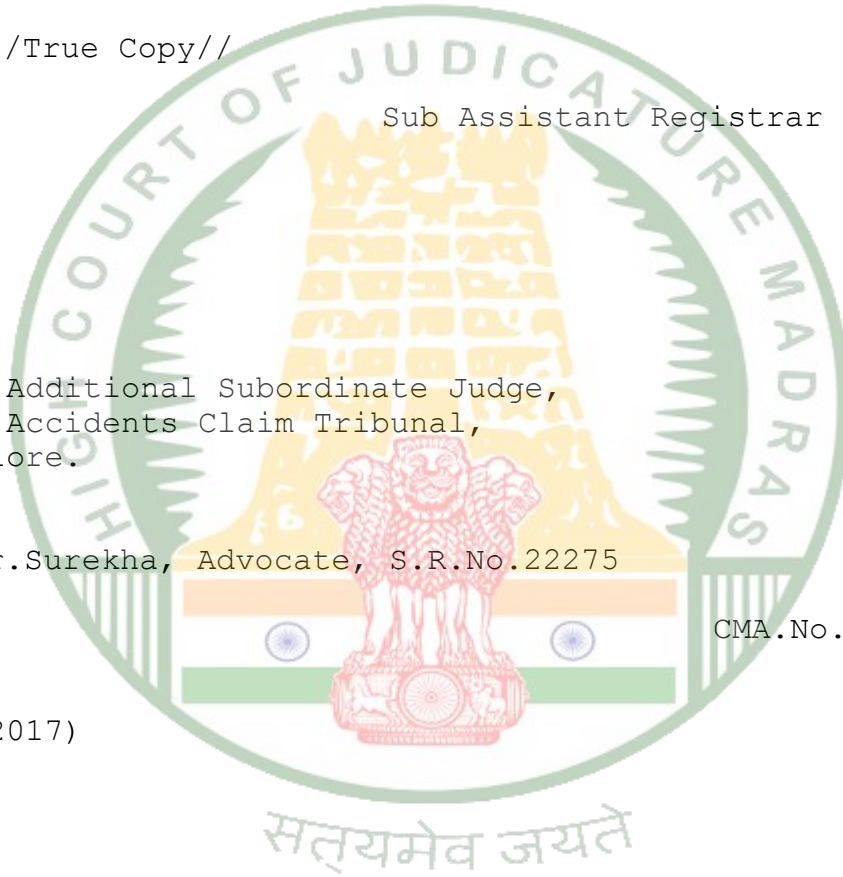
To

1. The II Additional Subordinate Judge,
Motor Accidents Claim Tribunal,
Cuddalore.

+1cc to Mr.Surekha, Advocate, S.R.No.22275

CMA.No.450 of 2015

CA(CO)
RS(15/05/2017)



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