

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.2073 of 2017

The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
Branch Office, Thane.

... Appellant / 4th respondent

versus

1. K.Gandhi

... 1st respondent/Petitioner

2. P.V.Nagaraj

... 2nd respondent/1st respondent

3. The Royal Sundaram Alliance
Insurance Co. Ltd.,

Rep. by its Divisional Manager,
Divisional Office,
No.46, Whites Road,
Chennai – 600 104.

... 3rd respondent/2nd respondent

4. Rahul Anil Bamb

... 4th respondent/3rd respondent

Prayer : The appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and Decree dated 30.01.2009 made in M.A.C.T.O.P.No.257 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court) Tirupattur.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.C.Prabhakarn
For R3 : Mrs.R.Sreevidhya

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the extent of liability.

2. The Tribunal by order dated 30.01.2009 in respect of the claim made by one Gandhi, awarded a sum of Rs.2,04,440/-. Of the total amount, an amount of Rs.70,000/- was directed to be paid by the third respondent herein and the balance amount of Rs.1,34,440/- was ordered to be paid by the appellant herein. Challenging the same, this appeal has been filed.

3. The learned counsel appearing for the appellant/New India Assurance Co. Ltd. has produced a Judgment of the Division Bench of this Court dated 02.11.2012 passed in C.M.A.No.2555 of 2009 in and by which, the liability has been ordered to be apportioned between the appellant to the extent of 50% and the insurer to the extent of Rs.70,000/- and the balance amount by the owner of the Car. This is the ratio of apportionment as ordered by the Division Bench. The learned counsel for the appellant pointed out that the order passed by the Tribunal needs to be modified in terms of the Judgment of the Division Bench.

4. The judgment produced by the learned counsel for the appellant is squarely applicable to the facts of the present case. The learned counsel appearing for the 3rd respondent has no objection in the Court passing an order in terms of the order passed by the Division Bench.

5. In such circumstances, this Court directs that out of Rs.2,04,440/-, the

3rd respondent herein shall pay a sum of Rs.70,000/-, the appellant shall pay a sum of Rs.1,02,220/- and the second respondent herein shall pay a sum of Rs.32,220/-.

6. The Civil Miscellaneous Appeal is ordered in the above terms. No costs.

7. It is represented by the learned counsel for the 3rd respondent that the 3rd respondent has deposited the amount. The appellant and the second respondent are directed to deposit their respective share of compensation as ordered by this Court, along with interest at the rate of 7.5% p.a. from the date of receipt of a copy of this Judgment, to the credit of claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the claimant through RTGS within a period of two weeks thereafter.

सत्यमेव जयते

08.08.2017

ogy/GLN

Index : Yes / No.

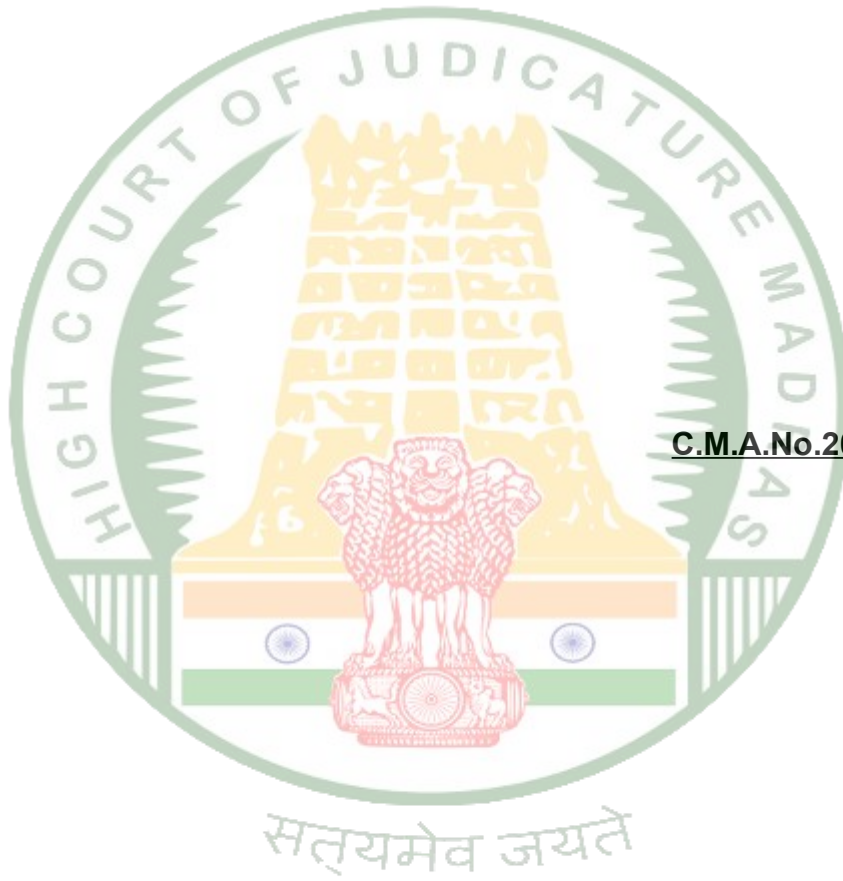
To

1. The Motor Accident Claims Tribunal
(Additional District Judge, Fast Track Court)
Tirupattur.

WEB COPY

Dr.S.VIMALA, J.

ogy/GLN



C.M.A.No.2073 of 2017

WEB COPY

08.08.2017

C.M.A.No.2073 of 2017**Dr. S.VIMALA.J.**

By order dated 08.08.2017, this Court, while disposing of the above Civil Miscellaneous Appeal, directed the appellant New India Assurance Company to pay a sum of Rs.1,02,220/-, out of the award amount of Rs.2,04,440/- and the 3rd respondent in the appeal, viz., Royal Sundaram Alliance Insurance Company Ltd., to pay a sum of Rs.70,000/- out of the award amount of Rs.2,04,440/- and the balance amount of Rs.32,220/- was ordered to be paid by the owner of the vehicle, viz., the second respondent in the appeal viz., P.V.Nagaraj. As the award has been passed without notice to the second respondent, P.V.Nagaraj, this matter has been listed today for clarification.

2. The learned counsel representing the claimant submits that the claimant will not enforce the order as against the 2nd respondent P.V.Nagaraj for a sum of Rs.32,220/-.

3. Recording the statement made by the learned counsel for the claimant, to the effect that the claimant is not inclined to enforce the order against the 2nd respondent herein, the award dated 08.08.2017 is confirmed, as no prejudice will be caused to the second respondent,

if notice is not issued to the 2nd respondent.

Dr. S.VIMALA.J,

sms

4. It is also relevant to point out that the owner, who is the second respondent, remained ex-parte before the Tribunal.

sms

11.08.2017



WEB COPY