

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.578 of 2017
and C.M.P.No.3422 of 2017

The Divisional Officer,
The Oriental Insurance Co. Ltd.
Eswarankoil Street,
Pondicherry. ... Appellant / 2nd Respondent

Versus

1. Anthonyammal ... 1st Respondent / Petitioner
2.R.Janakiraman ... 2nd Respondent/1st respondent

(R2 remained ex parte before
the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.03.2004 made in M.C.O.P.No.101 of 2003 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.1, Tindivanam.

For Appellant : Mr.M.Rajasekhar
R1 : Not ready
R2 : NA(exparte)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance company, challenging the finding on negligence.

2. It is the case of the claimant that on 08.07.2001, the claimant's brother Lawrance was driving the Car bearing Reg.No.PY01F 3817, coming from Thiruchitrambalam towards Sethurayapattu; at that time, the private bus, belonging to the 2nd respondent, bearing Reg.No.TN27 2526, coming from the opposite direction, driven in a rash and negligent manner, dashed against the car, thus, leading to the death of Lawrance.

3. To substantiate the same, the claimant has examined independent witnesses to speak about the accident. Documentary evidence in the form of FIR has also been marked to substantiate

the oral evidence.

4. The Insurance Company disputed the liability on the ground that the owner/driver of the offending bus was not at all responsible for the accident and that it was only the driver of the car, who was responsible for the accident. However, no evidence to substantiate the said contention has been let in by the insurance company. Based on the evidence available on record, the Tribunal fixed the negligence on the driver of the bus and, accordingly, awarded compensation.

5. The insurance company, questioning the finding on negligence alone, has come before this Court by filing the present appeal. No grievance has been raised with regard to the compensation awarded.

6. The claimant has adduced evidence to substantiate his case concerning the manner in which the accident had occurred and the vehicle which was responsible for the accident. However, the said evidence has been countered by the insurance company by disputing its liability to pay compensation on the ground that the driver of the bus was not responsible for the accident. However, the insurance company has not chosen to let in any evidence to substantiate the said contention. Had the accident occurred in the manner as has been spoken to by the insurance company, the insurance company/appellant would definitely have examined the driver of the bus to make out a case by showing that the driver of the car was negligent in driving the vehicle, thereby contributing to the accident. However, the insurance company has not chosen to adduce the necessary evidence in that regard. In the absence of any evidence to support the said stand of the insurance company, the Tribunal was wholly justified in fixing the liability on the driver of the bus and consequent thereof, as the insurer of the said vehicle, the appellant/insurance company was solely liable to compensate the claimant.

7. On an overall appreciation of the evidence available on record, this Court is of the considered view that the finding of negligence arrived at by the Tribunal is not liable to be set aside and the contention raised in this behalf by the appellant is liable to be dismissed.

8. In the result, this Civil Miscellaneous Appeal is dismissed, confirming the award dated 04.03.2004 passed in M.C.O.P.No.101 of 2003 by the Motor Accident Claims Tribunal, Fast Track Court No.1, Tindivanam. Consequently, connected miscellaneous petition is closed.

9. The appellant/Insurance Company is directed to deposit

the entire amount of compensation, less the amount, if any, already deposited, along with interest at the rate of 9% p.a. from the date of the claim petition till the date of deposit, to the credit of the 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 claimant is permitted to withdraw the same on filing necessary application.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

ogy/GLN

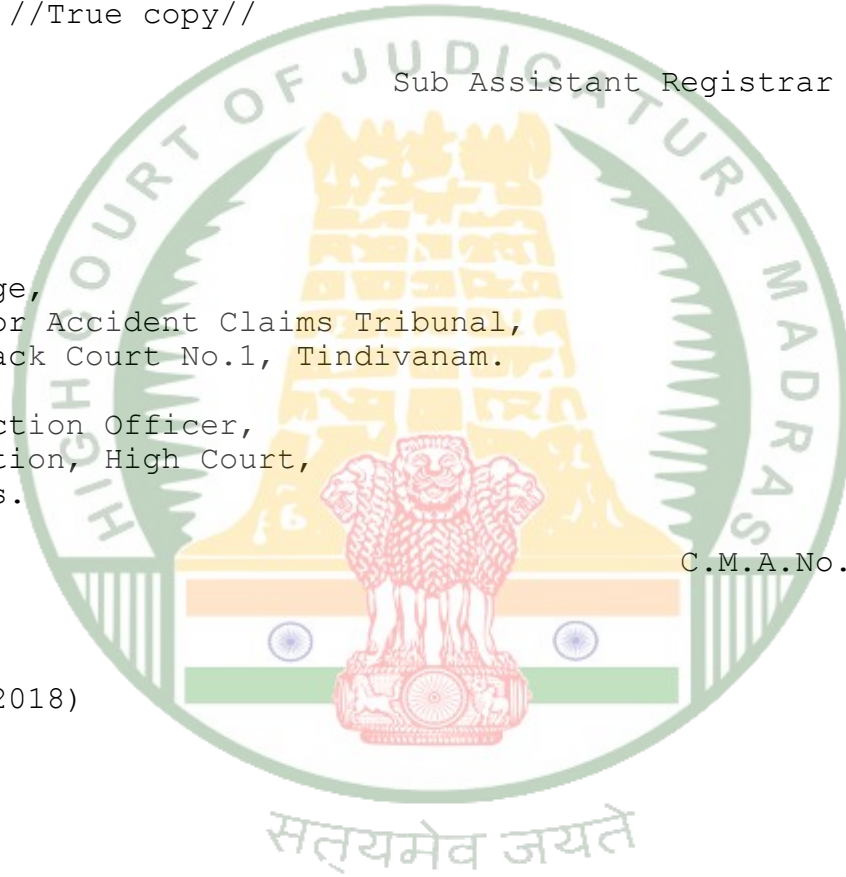
To

1. The Judge,
The Motor Accident Claims Tribunal,
Fast Track Court No.1, Tindivanam.

2. The Section Officer,
VR Section, High Court,
Madras.

C.M.A.No.578 of 2017

VGI (CO)
GN (19/03/2018)



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