

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1473 of 2010

The Branch Manager,
National Insurance Company Limited,
Branch Office, II Floor,
81-D, Chetty Street,
Opp. to Bus Stand,
Tiruchengode-637 211.

Appellant

Vs.

1. Varadharajan

2. S.P.Sakthivel

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2009 made in M.C.O.P.No.331 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional Special Judge), Krishnagiri.

For Appellant : Ms.R.Sreevidhya

For R1 : Mr.M.Sriram

R2 : Ex-parte before the Trial Court

JUDGMENT

In a road accident that took place on 26.12.2006, the claimant while was travelling in a goods vehicle, which in this case, a mini lorry bearing Registration No.TN-34/D-0545, was knocked down, owing to which, he suffered serious injuries to his person and made a claim for Rs.20,00,000/-. After considering the evidence before it, the Tribunal has passed an award for Rs.4,81,820/- and directed the Insurance Company to make the payment along with interest at 6% per annum.

2. Heard both sides.

3. The only point argued vehemently by the learned counsel for the appellant was that the claimant at the relevant time was travelling essentially as an unauthorised passenger in a goods vehicle that there was no additional cover for the claimant and consequently, the Insurance Company is not liable to meet the liability arising out of the impugned award. In support of the contention, the learned counsel highlighted the incongruities that get exposed on a combined reading of

Ext.P1, F.I.R. and the testimony of PW-1, the claimant, as to the manner in which the accident had taken place. Ext.P-1, F.I.R. was lodged at the instance of the cleaner of the lorry and according to his version, the claimant was travelling as a load man in the mini lorry and that the accident had happened when he fell down from the mini lorry. PW-1 however would depose that at near the place of accident, he was standing outside the lorry and the lorry driver inadvertently started the lorry and hit him owing to which, he suffered injury. Barring this no other circumstances are highlighted by the learned counsel.

4. I have given my careful consideration to the submissions of the learned counsel. It may have to be borne in mind that notwithstanding the fact that the claimant has produced Ext.P-1, F.I.R., he is not the author of the F.I.R., nor was it registered at his instance. Therefore, the claimant's version has to be independently considered.

5. If the claimant had travelled in the lorry as a load man merely then the Insurance Company should not be fastened with liability unless he also represents the owner of the goods carried in the lorry. Admittedly, there is a consignment of bottles. Alternatively, if claimant's version of the accident is independently proved then he becomes a third party since he was only standing on the road at the relevant time. In this context, it cannot be ignored that a load man occasionally travels in a lorry, whereas the cleaner of a vehicle is a companion of the driver and when he files a complaint, there would be a tendency in him to save the skin of his driver. The version of the cleaner as disclosed in Ext.P1 therefore needs to be taken with a pinch of salt. What now remains is the evidence of PW-1. Besides, while administering a beneficial legislation such as Motor Vehicles Act, a beneficiary should not be denied his share of benefit except when circumstances strong enough to deny the benefit under the Act are proved. Where it has not happened the odds should not be loaded against the claimant by presuming the contra.

6. To conclude, I find little merit in the appeal and hence the same is dismissed but without costs. The learned counsel submitted that the entire amount has been deposited before the Tribunal and the claimant is free to withdraw the same forthwith.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kmi

To:

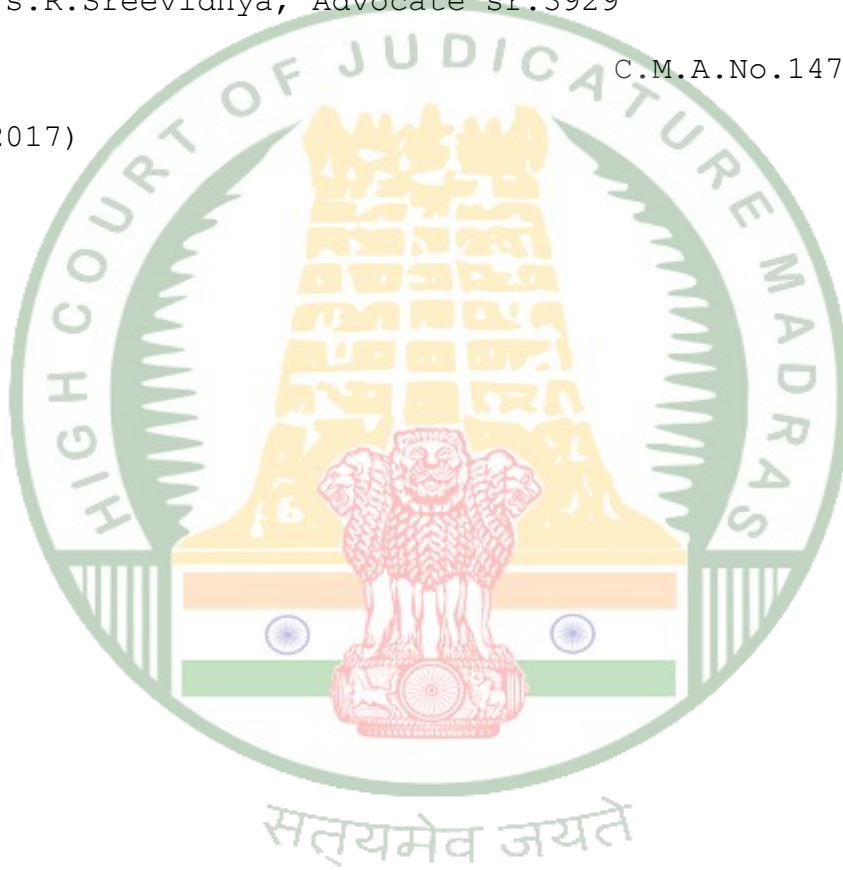
1. The Additional Special Judge,
Motor Accidents Claims Tribunal, Krishnagiri.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Mukund R.Pandiyan, Advocate sr.4122

+1cc to M/s.R.Sreevidhya, Advocate sr.3929

C.M.A.No.1473 of 2010

mg(co)
ss(13/02/2017)



WEB COPY