

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.1323 of 2001

R.Rajendran
No.15, 4th Street,
Nada Kuppam, Chennai-5. ... Appellant/Petitioner

Vs.
1.K.Suresh Babu
2.National Insurance Co. Ltd.,
66, Grems Road, Chennai - 6. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 28.11.2000 made in MACTOP.No.3440 of 1997 on the file of the Motor Accidents Claims Tribunal (4th Judge, Small Causes Court), Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondents : Mr.D.Baskaran [for R2]
R1 - Dismissed
[vide order dated 09.11.2016]

JUDGMENT

In a road accident that took place on 04.07.1997 at about 21.30 hours, a motor cycle belonging to the first respondent and insured with the second respondent hit a pedestrian, in which he suffered injuries for which he approached the Tribunal with a claim of Rs.75,000/-, against which the Tribunal has passed an award for Rs.46,300/- payable with interest @ 12% per annum.

2. Before the Tribunal, the second respondent/Insurance Company has taken up a plea that the rider of the bike had a licence only to drive light motor vehicle and not a two wheeler and this plea was accepted by the Tribunal and hence it fastened the entire liability only on the owner of the vehicle. Aggrieved by this portion of the award, the claimant has come forward with this appeal.

3. It is not in dispute that the rider of the bike at that relevant time did not possess a valid licence to ride a two

wheeler, even though he did possess a licence to drive Light Motor Vehicle. This obviously is a violation of policy condition. But then in all such situations the doctrine of pay and recover is applicable and accordingly the Insurance Company is directed to meet the liability at the first instance and then to realize the sum from the owner of the vehicle. Given the fact that the case is of the year 1997, this Court is constrained to reduce the interest rate from 12% to 7.5% through out and the Insurance Company is directed to deposit the said amount with interest as fixed by this Court within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith.

4. In the result, the appeal is partly allowed without costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ds
To

1.The Motor Accidents Claims Tribunal,
(IV Small Causes Court), Chennai.

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

+1cc to Mr.A.N. Viswanatha Rao, Advocate, S.R.No.3260

+1cc to Mr.D. Bhaskaran, Advocate, S.R.No.2771

nm(CO)
md(06/03/2017)

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