

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.07.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.M.A. No.3762 of 2008

and

M.P.No.1 of 2008

The Branch Manager,
National Insurance Company Ltd.,
Pondicherry

..Appellant/2nd Respondent

Versus

1. Gunasekaran ..1st Respondent/Petitioner
2. Abdul Kabankhan ..2nd Respondent/1st Respondent
3. The Managing Director
Thanthai Periyar Transport Corporation,
Villupuram.

..3rd Respondent/3rd Respondent

Appeal filed under Section 173 of Motor Vehicle Act against the order dated 20.01.2005 made in M.A.C.T.O.P. No. 313 of 1997 on the file of Motor Accident Claims Tribunal (Additional Subordinate Court, Tindivanam).

For Appellant : Mr.S.Vadivel

For Respondents: Mr.S.S.Swaminathan (R3)
No appearance (R1 and R2)

J U D G M E N T
सत्यमेव जयते

Challenging the finding of the negligence by the Claims Tribunal in M.A.C.T.O.P.No.313 of 1997 dated 20.01.2005, the Insurance Company has preferred this Civil Miscellaneous Appeal.

2. One Mr.Gunasekaran, aged 41 years, working as a conductor in TPTC, Villupuram, earning a sum of Rs.3,500/- per month met with an accident that occurred on 16.10.1996. Due to which he sustained fracture of jaw and multiple injuries all over the body. Hence, he filed a claim petition in M.A.C.T.O.P.No.313 of 1997, seeking compensation for a sum of Rs.1,32,000/-. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.25,000/- (Rupees Twenty Five Thousand), along with interest @9% per annum from the date of petition till the date of payment, as compensation, by its Judgment and decree dated 20.01.2005. The Claims Tribunal in the said Judgment has directed appellant and the second respondent to jointly and severally pay the compensation to the claimant. Challenging the same, this Civil

Miscellaneous Appeal has been filed by the Insurance Company.

3. The learned counsel for the appellant would submit that the Claims Tribunal, without appreciating the relevant materials passed the award by fixing the liability on the appellant. He would further submit that the Claims Tribunal failed to see that the driver of the bus bearing registration No.TN-32-N-0546 is also equally responsible for the accident. It is his further contention that the claimant has filed Ex.R4-Judgement passed by the Motor Accident Claims Tribunal (Additional District Judge cum-Chief Judicial Magistrate Court) Tiruvannamalai District, in respect of the very same accident, to prove that the vehicle belonging to the third respondent bearing Registration No.TN-32-Y-2043 was not insured with the appellant on the date of accident i.e. on 16.10.1996 and whereas the policy was issued to the said van covering the period between 22.10.1996 to 21.10.1997. But, the Claims Tribunal, Tindivanam has not considered the same and fixed the liability on the Insurance Company.

4. Heard both sides and perused the materials on record.

5. In a batch of Claim Petitions filed in respect of same accident, the Claims Tribunal, Tiruvannamalai, on 22.03.2000, has passed the following order:

"38. In fine, the petitions in M.C.O.P.Nos.9/98, 10/98, 11/98, 13/98, 15/98 to 17/98, 21/98, 23/98 to 25/98 and 285/98 are allowed and award is passed for Rs.1,02,000/-, Rs.1,50,000/-, Rs.35,600/-, Rs.4,000/-, Rs.4,000/-, Rs.43,000/-, Rs.1,24,000/- Rs.4,000/-, Rs.4,000/-, Rs.4,000/-, Rs.4,000/- and Rs.4,000/- respectively with cost and interest at the rate of 12% per annum from the date of petition till realisation. The time for payment is two months. The first respondent in all the petitions is directed to deposit the award amount into Court at first. The award amounts passed in MCOP.Nos.11/98, 13/98, 15/98, 16/98, 23/98 to 25/98 and 285/98 shall be invested in any one of the nationalised banks for a period of three years and the petitioners are permitted to withdraw their accrued interest once in three months directly from the bank under intimation to this Court."

6. It is seen that the vehicle belonging to the third respondent bearing Registration No.TN-32-Y-2043 was not insured with the appellant on the date of accident i.e. on

16.10.1996 and subsequently the vehicle was insured with the Appellant/Insurance Company covering the period between 22.10.1996 to 21.10.1997. Therefore, it is clear that on the date of accident there is no Insurance Policy for the vehicle bearing Registration No.TN-32-Y-2043 involved in the accident and therefore the appellant is not liable to pay compensation. The Claims tribunal, Tirunvannamalai, in its Judgement dated 22.03.2000 has rightly observed the said fact and directed the owner of the vehicle bearing Registration No.TN-32-Y-2043 to pay the compensation. It is also pertinent to note that the said order has become final as there is no appeal as against the said order, by one of the parties, including the claimants therein. Though the said Judgment was marked by the appellant before the Claims tribunal, as Ex.R4, the Claims Tribunal has not adverted to the same. When, admittedly there is no valid policy available on the date of accident, the Insurance Company cannot be held liable and the claimant can only claim the compensation from the owner.

7. In view of the above, this Civil Miscellaneous Appeal is allowed. The Compensation awarded by the Claims Tribunal, by its order dated 20.01.2005 shall be deposited by the third respondent, along with interest @ 9% per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Claimant is permitted to withdraw the same. The amount already deposited by the Insurance Company shall be refunded. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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arr /vv

To

The Motor Accident Claims Tribunal,
(Subordinate Judge), Tindivanam.

+1 Cc to Mr.S. Vadivel, Advocate sr 51446.

+1 Cc to Mr.S.S. Swaminathan, Advocate sr 57588.

C.M.A. No.3762 of 2008

GJII (CO)

sp(09/10/2017)

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