

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM :
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.3789 of 2008
and MP.No.1 of 2008

The Branch Manager,
United India Insurance Co. Ltd.,
Branch Office,
No.261, Jawaharlal Nehru Street,
P.B.No.172,
Pondicherry - 605 001. Appellant/2nd Respondent

Vs.

1.N.Jothi Leela
2.S.Rosi
3.S.Selvakumar 1 to 3rd Respondents/Petitioners

4.The Manager,
M/s.Best Logistics Solutions (P) Ltd.,
No.5, Kattiakaran Street,
Cuddalore-2
(R4 set exparte before MACT)4th Respondent/1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 28.06.2007 in MCOP.No.132 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Court) at Hosur.

For Appellant : Mr.T.Ravichandran
For Respondents : Mr.V.Kumaravelan

JUDGMENT

1.1 The Insurance Company is fastened with liability to pay compensation of Rs.3,88,200/- with interest @ 9% per annum in a matter arising out of a road accident that had taken place on 18.05.2005 at about 2.00 a.m., has preferred this appeal challenging its liability. The facts as to how the accident took place as disclosed in Claim petition is that on 18.05.2005 at about 2.00 a.m., one Savarimuthu while driving a Mini Lorry bearing Registration No.TN31-E-4593, had ran on to hit another lorry going in front of his vehicle, and in the said accident

Savarimuthu died. His heirs have moved the Tribunal with a total claim of Rs.8,00,000/-, as against which the Tribunal has passed an award for Rs.3,88,200/- with interest @ 9% per annum.

1.2. The claim was preferred against the owner and the insurance company of the lorry in which Savarimuthu was the driver. The other vehicle said to have involved in the accident was reported as not traceable. This is a line of facts disclosed both in the petition as well as in the FIR.

1.3. Before the Tribunal the Insurance Company has taken up a contention that Savarimuthu is a tortfeasor, and hence no compensation is payable to his heirs, as since a tortfeasor cannot benefit himself for his own tort. While the Tribunal has entered a finding along the lines the appellant had contended, it however proceeded to rely on the authority reported in 2007 ACJ 278, held that inasmuch as the petition was filed under Section 163 (A) of M.V.Act, there was no need for the claimants to prove negligence and it is on this reason the Tribunal proceeded to mulct the insurance company with the aforesaid liability. Before this Court, the learned counsel for the appellant reiterated the same contention as was put forward by the Insurance Company before the Tribunal.

4. The point involved is whether one is entitled to be benefited for his own negligence. In Deepal Girishbhai Soni Vs United India Insurance Co., Ltd., [(2004) 5 SCC 385], a three Judges Bench of the Supreme Court has held incidentally that a even tortfeasor can seek compensation under Sec.163-A of the Motor Vehicles Act for his own wrong. Even though this view was doubted in National Insurance Company Ltd., Vs Sinitha [(2012) 2 SCC 356], the latter one was delivered by a Bench of two Judges. In view of the decision of the Hon'ble Supreme Court in Deepa Grishbhai Soni case, the appellant cannot avoid liability.

5. In conclusion, this court does not find any merit in the appeal and the same is dismissed, and the award of the Tribunal in MCOP.No.132 of 2005 on the file of the Motor Accident Claims Tribunal (Sub Court) at Hosur is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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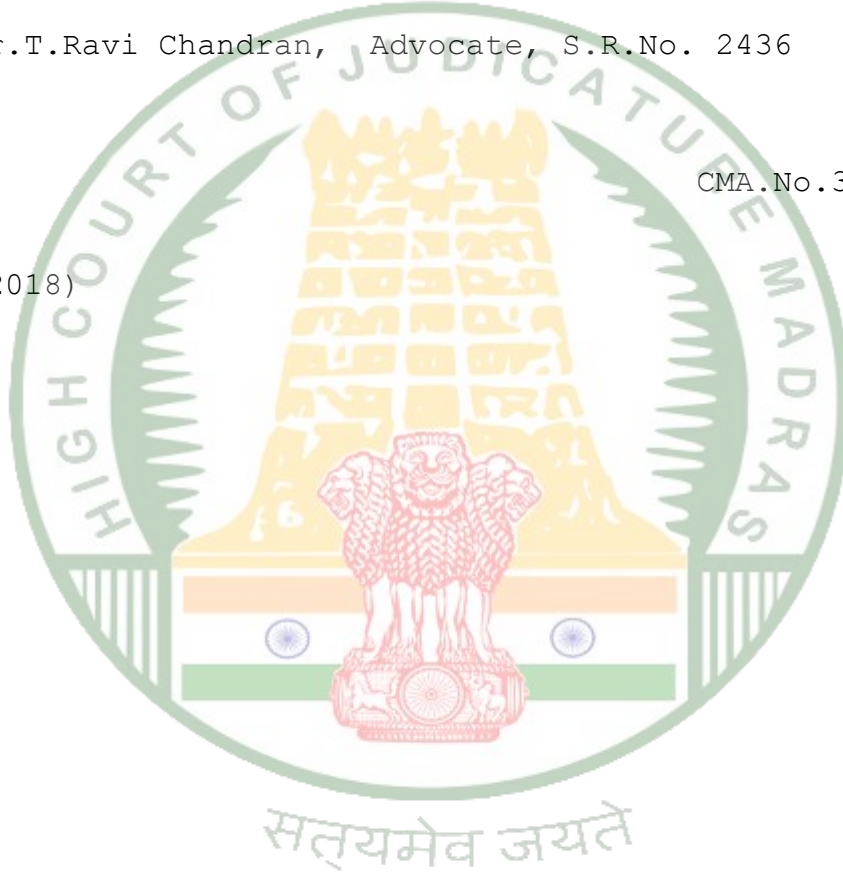
1.The Motor Accidents Claims Tribunal,
Subordinate Court
Hosur.

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

+1cc to Mr.T.Ravi Chandran, Advocate, S.R.No. 2436

CMA.No.3789 of 2008

SJ(CO)
GN(12/11/2018)



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