

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.02.2017

CORAM

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2359 of 2003

Murugan

...Appellant

...vs...

1.Jayanathi

2.M/s.Oriental Insurance Company
Limited, City Branch,
No.2, Laxmi Complex Thillai Nagar,
Thiruchi

... Respondents

Prayer: Civil Miscellaneous Appeal is filed against the judgment and decree dated 3.2.2003, passed by the learned Subordinate Judge at Madurantakkam, Chenglepet District in M.C.O.P.No.851 of 2000 awarding the compensation amount of Rs.35,000/- as against the claim amount of Rs.1,00,000/-.

For Appellant : Mr.S.N.Nagu Sah

For R1 : Exparte before the Tribunal

For R2 : Mr.S.Arun kumar

JUDGMENT

The appellant is the claimant in M.C.O.P.No.851 of 2000 on the file of the Sub-Court, Madurantakkam, Chenglepet District.

2.The claimant was injured in a Motor Accident on 20.06.1998. Immediately after the accident, he was taken to Madurantakkam Government Hospital. As he sustained grievance injuries, he was shifted to Chengelpet Medical Hospital for better treatment. He was admitted to the Government Hospital, Chennai on 21.06.1998 and discharged on 18.08.1998. He sustained injury to left thigh and head injury. (Left lower limb injury)

3.The claimant filed the claim petition claiming a total compensation of Rs.1,00,000/-. The tribunal awarded a total compensation of Rs.35,000/-. The first respondent is the owner of the offending vehicle. Admittedly, it was insured with the second respondent-Insurance Company.

4.The Tribunal has held that the accident occurred only due to the rash and negligent driving of the offending vehicle. The Tribunal exonerated the Insurance Company on the ground that the owner of the vehicle did not possess valid registration certificate and the driver did not possess valid driving licence at the time of the accident.

5.Aggrrieved by the order exonerating the second defendant from liability and as also the quantum fixed by the Tribunal, the present appeal has been preferred by the claimant.

6.The learned counsel for the Insurance Company has submitted that the vehicle involved in the accident had no valid permit at the time of accident and that therefore, the Insurance Company is not liable to pay compensation, as per the terms and conditions of the the policy.

7. The learned counsel for the appellant has cited the decision of the Supreme Court in Kusum Lata V.Satbir (AIR 2011 SC 1234) , wherein, it has been held as follows:-

"In view of dispute about licence of driver of offending vehicle, Insurance Company held liable to pay compensation at first instance and later recover it from owner of vehicle"

He has also relied on the decision of the Supreme Court in Kamala Mangalal Vayani and others Vs. United India Insurance Company Limited and others (2010) 12 SCC 488 , wherein, it has been held as follows:-

Motor Vehicles Act, 1988-Ss.147 and 149 - Rights of insurer as an indemnifier to recover compensation paid - Issue of valid permit left open for insurer to raise it in subsequent proceedings against owner to recover compensation - Practice and Procedure - Res judicata - When not applicable.

8. In the case at hand, it is not in dispute that the accident occurred due to the rash and negligent driving of the offending vehicle. It is also not in dispute that the vehicle was insured with the second respondent/Insurance Company. The

first respondent remained exparte. He has failed to furnish the documents relating to the vehicle and the driver. Therefore, it cannot be said that the tribunal erred in coming to the conclusion that the policy conditions have been violated. However, the petitioner is a third party. In the light of the above mentioned decisions of the Supreme Court, this Court is inclined to direct the Insurance Company to pay the compensation and later recover the amount from the owner of the vehicle by way of an execution petition.

9. Coming to the quantum of compensation, it is seen that the Tribunal awarded Rs.25,000/- under the head of injuries, Rs.5,000/- under the head of pain and suffering, Rs.5,000/- towards transport charges.

10. Pending disposal of this appeal, this Court directed the claimant to be examined by Government Doctors, as he has produced only the wound certificate and the discharge summary has not been produced.

11. In pursuance of the order of this Court, the appellant/claimant was examined on 03.02.2014 by the Assistant Professor of Orthopaedics, attached to the Government Hospital, Chennai. Their opinions/certificates have been placed on record.

12. Neuro Surgeon opined that the claimant has suffered mild cerebellar dysfunction (unsteadiness while walking and slurring of speech) which amount to disability rate of 25%, which may or may not be related to the old head injury (at the time of accident).

13. Orthopaedist opined "Fracture shaft of femur left united with k-nail insitu with limb length discrepancy of one c.m and has pain on squatting disability of left lower limb is 10% which may or may not be related to the old injury stated."

14. Considering the injury sustained by the victim/claimant and taking note of the medical reports produced before this Court, I am of the opinion, allowing an additional amount of Rs.20,000/- under the head of injuries, will meet the ends of justice.

15. Having regard to the date of accident, I am not inclined to modify the compensation awarded under other heads.

16. In the result, this Civil Miscellaneous Appeal is allowed in part and the total compensation is enhanced from Rs.35,000/- to Rs.55,000/- with 7.5% interest from the date of claim petition till the date of payment. The second respondent- Insurance Company shall deposit the award amount within four weeks from the date of receipt of copy of this judgment. The

insurance Company is at liberty to recover the award amount from the first respondent-owner of the vehicle by way of execution petition without filing separate proceedings. The appellant/claimant is at liberty to withdraw the award amount so deposited by the Insurance Company. There shall be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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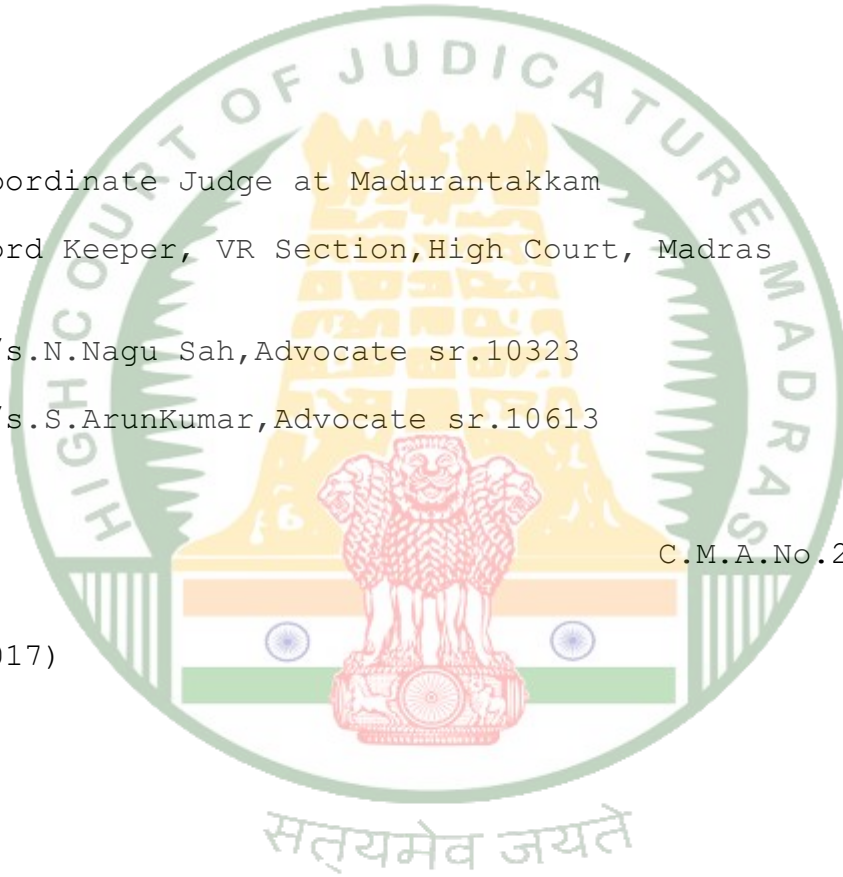
- 1.The Subordinate Judge at Madurantakkam
- 2.The Record Keeper, VR Section,High Court, Madras

+1cc to M/s.N.Nagu Sah,Advocate sr.10323

+1cc to M/s.S.Arunkumar,Advocate sr.10613

C.M.A.No.2359 of 2003

mv (co)
ss (24/4/2017)



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