

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :08.12.2016

Judgment Pronounced on : 15.09.2017

CORAM: THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.3877 of 2004
and CMP.No.20650 of 2004

National Insurance Co. Ltd.,
Namakkal.

... Appellant /2nd Respondent
Vs

1.D.Raju

2.R.Mani

... Respondents/Petitioner &
1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 30.4.2003 made in OP.No.1736 of 2002 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, FTC-III, Namakkal.

For Appellant : Mr.S.Arun Kumar
For Respondents : No Appearance

JUDGMENT

The insurance company of a moped bearing No.TN28 D-2742 has come forward with the present appeal challenging its liability to pay compensation on the ground of the suspected flaw in implicating the said vehicle in the accident that had taken place on 14.07.2000 at about 8.30 p.m. at Namakkal - Senthamangalam Main Road.

2. The claimant was a pedestrian, when a TVS-50 bearing the number stated above came from behind and dashed against him, due to which, the claimant suffered fracture to his hip bone and injuries to other parts of the body. He moved the Tribunal with a claim of Rs.5,00,000/-, as against which, the Tribunal passed an award for Rs.1,60,000/- payable with interest at 9% per annum. Out of the said sum, Rs.35,000/- represents the medical expenses he incurred.

3. Before the Tribunal, the insurance company in essence alleged that the vehicle in question was not insured at the time

of the accident and was not liable. However, the insurance policy was filed as Ext.R-1. It was proved through RW.1, an official of the insurance company whose testimony, taken along with insurance policy indicated that the vehicle in question was insured with the appellant at the time of accident and justly the Tribunal has rejected the plea and fastened the liability jointly and severally on the owner of the vehicle as well as on the appellant.

4. Before this Court, the learned counsel for the appellant contended that the involvement of accident is strongly suspected, since the same vehicle was shown to be involved in MCOP.No.782/2000, 820/2000, 821/2000 and 835/2000. Of them, MCOP.No.821 of 2000 was later re-numbered as MCOP.No.2091 of 2002, that was subsequently dismissed for default. MCOP.No.820/2000 is appeared to have been renumbered as MCOP.No. 2017/02 and that was dismissed for default on 14.07.2000. So far as MCOP.835/2000 is concerned, it is renumbered as MCOP.No.1736/02 and was stated to be dismissed as not pressed. The same is reiterated in the Memorandum of Appeal as well. Of them, so far as MCOP.1736/2002 is concerned, the allegation that the same has been dismissed as withdrawn appear to be incorrect since the present appeal itself arises from the award therein.

5. While there may be a possibility of fraud to be committed, yet it requires proper pleading and adequate evidence to support it. The fact that two of the four claim petitions referred to by the appellant have been dismissed for default, does not advance anything more than the fact that they have been so dismissed. In a given case, it can also be stated that the rider of the moped in question might be a bad rider with a propensity to run his moped on others. It is hence, one requires categorical proof that places the fraud alleged, howsoever, tempting it might be, beyond any probable situations to the contrary.

6. To conclude I find that the appeal lacks merits and same is dismissed. The respondents in the claim petition are held jointly and severally liable to pay the claimant the entire award of compensation with accrued interest, less if any already deposited, within a period of six weeks from the date of receipt of a copy of this order and on receipt of the same, the claimant is entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To:

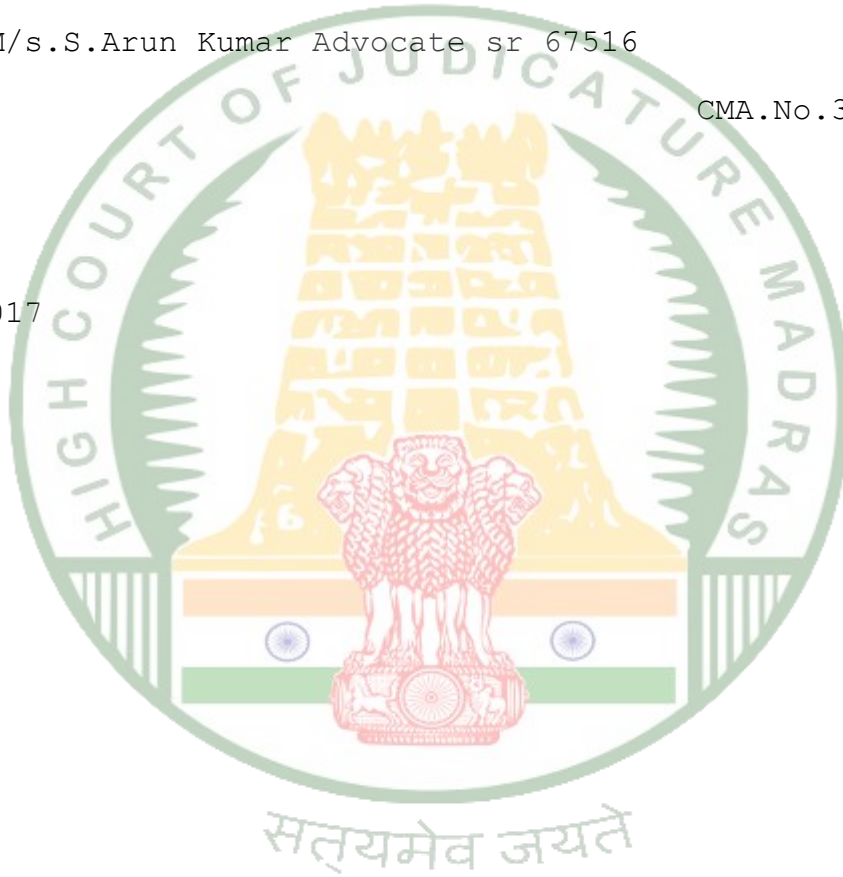
1.The Additional District Judge,
Fast Track Court No.III,
Motor Accidents Claims Tribunal
Namakkal.

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

+1 cc to M/s.S.Arun Kumar Advocate sr 67516

CMA.No.3877 of 2004

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