



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD).No.30 of 2017

and

C.M.P(MD).No.283 of 2017

National Insurance Co. Ltd.,
Rep. through its Divisional Manager
2A, Thirumakkulam
North Street
Tallakulam,
Madurai - 2.

.. Appellant/Respondent-2

Vs.

1.S.Ramachandran
2.S.Sheik Mohideen

.. Respondent/Petitioner
..Respondent/Respondent-1

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and Order passed in M.C.O.P.No.769 of 2004 dated 01.09.2009 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Judge/Fast Track Court No.III), Madurai.

For Appellant : Mrs.K.R.Shiva Shankari for
Mr. S.Srinivasa Ragavan
For R1 & R2 : No appearance

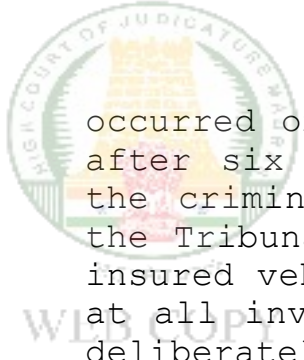
J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company against the decree and Order passed in M.C.O.P.No.769 of 2004 dated 01.09.2009 on the file of the Motor Accident Claims Tribunal (Additional District & Sessions Judge/Fast Track Court No.III), Madurai.

2. Heard the learned counsel appearing for the appellant/Transport Corporation and perused the records.

3. The Tribunal, fixing the liability on the driver of the insured vehicle, awarded Rs.47,000/- to the claimants.

4. The learned counsel appearing for the appellant Insurance Company would submit that even though the accident



occurred on 16.03.2003, FIR was registered on 09.09.2003 i.e only after six months. However, the criminal case was also closed by the criminal court as 'time barred'. When such is the position, the Tribunal should not have fixed liability on the driver of the insured vehicle. Further, he would submit that the vehicle was not at all involved in the accident and only thereafter, it has been deliberately roped in.

5. However, a close scrutiny of the award would show that the Tribunal relied P.W.1's evidence and also Ex.P.7, the certified copy of the order passed by the trial court, wherein it has been clearly stated that the case was closed under Section 468 Cr.P.C for failure on the part of the police to file a final report within a period of limitation. Therefore, Ex.R5 relied upon by the appellant Insurance Company made by the police for closing the case as 'mistake of fact' was found to be clearly erroneous. However, P.W.1 clearly stated that some one, who witnessed the accident, would have given complaint and therefore, he did not give any complaint. Moreover hospital authorities subsequently informed to police about the accident. In those circumstances, the Tribunal rightly found that the accident occurred because of the driver of the vehicle insured with the appellant corporation. Hence, the finding reached by the Tribunal cannot be set aside.

6. The respondent/claimant sustained fracture in the right leg and he was operated and screws and rods were fixed for the fracture of tibia and fibula of the right leg of the petitioner. Because of that, the claimant sustained restriction in mobility and stability in the right leg as deposed by P.W.2 Doctor. Therefore, 32% partial permanent disability was rightly determined by the Tribunal and a sum of Rs.47,000/- was awarded by the Tribunal. Therefore, it would not be interfered with. Moreover the accident occurred as early as on 16.03.2003 and award was passed by the Tribunal about 7 years ago on 01.09.2009. At this distance of time, it is impossible for this Court to entertain this appeal.

7. In the result, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, the connected C.M.P.(MD) No. 283 of 2017 is also dismissed.

8. The appellant is directed to transfer the entire amount along with interest and costs through RTGS within a period of six weeks from the date of receipt of copy of this order, if not already deposited.

Sd/-

Assistant Registrar(CS-III)



CM
To,
Motor Accident Claims Tribunal,
(Additional District & Sessions Judge/
Fast Track Court No.III), Madurai.

Copy to:
The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai

+1 cc to MR.S.SRINIVASA RAGHAVAN, Advocate SR.No.2643

**C.M.A. (MD) No.30 of 2017and
C.M.P (MD) .No.283 of 2017
12.01.2017**

SMA/PM-PN/16.03.2017:3P/4C