



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1291 of 2014

and

M.P(MD)No.3 of 2014

The Divisional Manager,
United India Insurance Company Limited,
7-A, West Veli Street, II Floor,
Madurai.

... Appellant/2nd respondent

Vs.

1.M.Sahul Hameed

...1st Respondent/petitioner

2.Balasubramanian (Firm)Bus Service,
through its Proprietor
Mr.S.Balasubramanian
Cumbum Road, Thenkarai,
Periyakulam, Theni District.

...2nd Respondent/1st respondent

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order passed in M.C.O.P.No.474 of 2010, dated 15.09.2012 on the file of the Motor Accident Claims Tribunal, III Additional Sub Court, Madurai and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

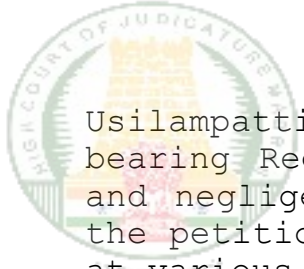
For Respondents : Mr.S.Baghuvan for R1
No appearance for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award passed in M.C.O.P. No.474 of 2010, dated 15.09.2012, Motor Accident Claims Tribunal, III Additional Sub Court, Madurai.

2. It is a case of an accident causing injuries, which took place on 27.09.2009 at about 08.15 a.m, on Madurai to Uthamapalayam road.

3.It is the case of the petitioner before the Tribunal that on the date of accident, when the petitioner was driving TATA Sumo car bearing Registration No.TN-37 M-75556, from East to West, on



Usilampatti to Theni road, the driver of the first respondent's bus bearing Registration No.TN-60 D-7779, drove the vehicle in a rash and negligent manner and dashed against the car and due to which, the petitioner sustained injuries, subsequently, had taken treatment at various hospitals.

4.The petitioner filed an application in M.C.O.P.No.474 of 2010 on the file of the Motor Accident Claims Tribunal, III Additional Sub Court, Madurai, seeking a sum of Rs.3,10,000/- as compensation.

5. Before the Tribunal, on the side of the petitioner, he himself examined as P.W.1 and six documents viz., Ex.P.1 to Ex.P.6 were marked and on the side of respondents, two witnesses were examined as R.W.1 and R.W.2 and two documents Ex.R.1 and Ex.R.2 were marked.

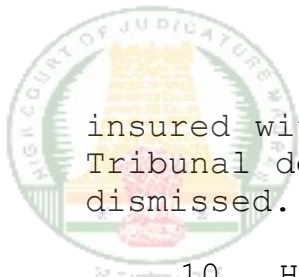
6.The Tribunal, after considering the pleadings, oral and documentary evidences and arguments of the counsel for the claimants and respondents and also appreciating the evidence on record, held that the accident occurred, only due to rash and negligent driving first respondent driver and directed the second respondent to pay a sum of Rs.29,842/-, as compensation.

7.Against which, the appellant/Insurance Company has filed this present appeal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricted his argument only on the ground of liability.

8.The learned Counsel for the respondent/claimant disputed the said contention and he would draw the attention of this Court to the findings of the Tribunal, to Paragraph No.8 and wherein it has been discussed as follows:

8.... from the oral evidence of the petitioner as PW.1 and FIR as borne out under Ex.P.1, it is seen that the vehicle belonging to the 1st respondent was driven by its driver in a rash and negligent manner and has caused the accident on the petitioner. From the aforesaid documents the undisputed fact is that the petitioner is involved in the accident. On the side of the respondent, R.W.1 was examined, the rough sketch is marked as Ex.R.1. The contentions of the 2nd respondent is that the negligent is on the part of the petitioner. As per FIR and the evidence of P.W.1, the charge sheet, the facts are clear that the sole negligent conduct in driving lies on the driver of the 1st respondent. Hence, only an absolute liability has to be fastened on the vehicle belonging to the 1st respondent. Hence, there is no impediment in holding that the accident took place, due to the rash and negligent driving of the 1st respondent's driver.

9. Based on the above finding, the learned counsel for the respondents/claimants submitted that accident occurred only due to rash and negligent driving of the driver of the bus, which was



insured with the appellant/Insurance Company and the finding of the Tribunal deserves no interference and hence, this appeal has to be dismissed.

10. Heard the learned counsel appearing on both sides and perused the materials available on record.

11. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and considering the evidence of P.W.1 and also Ex.P.1 FIR, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the offending vehicle and since the vehicle was insured with the appellant/Insurance Company, directed the first and second respondents to pay the compensation to the claimants and therefore, there is no infirmity in the award passed by the Tribunal and the same does not require interference at the hands of this Court.

12. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 15.09.2012, passed in MCOP.No. 474 of 2010, on the file of the Motor Accidents Claims Tribunal Cum III Additional Sub Judge, Madurai is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
III Additional Sub Court, Madurai.

+1cc to M/s.J.S.MURALI Advocate in SR. No. 80164

DSK

JS/GT/SAR.1/30.10.2017/3P-3C

C.M.A (MD) No.1291 of 2014

19.09.2017