



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2017

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 298 Of 2015

Rajaguru @ Rajagurupandian ... Appellant/1st respondent

Vs

1. Soundararajan ... 1stRespondent/Petitioner (Claimant)

2. Mathivanan

3. Branch Manager,
United India Insurance,
Company Ltd,
Coimbatore-18.

... Respondents 2 & 3/Respondents 2 & 3

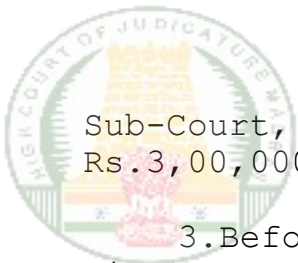
PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the decreetal award dated 18.09.2014 in M.C.O.P.No.225 of 2006, on the file of the Motor Accidents Claims Tribunal/Sub Court, Srivilliputhur.

For Appellant	: M/s.P.Santhoshkumar
For R1	: Mr.M.Ashok Kumar
For R2	: Mr.V.Janakiramulu
For R3	: Mr.D.Sivakumar

JUDGMENT

The Civil Miscellaneous Appeal has been filed by the appellant/first respondent against the award and decree made in M.C.O.P.No.225 of 2006, dated 18.09.2014 on the file of the Motor Accidents Claims Tribunal / Sub-Court, Srivilliputhur.

2.It is a case of accident took place on 13.07.2005 at about 09.15 p.m. When the petitioner was riding his bicycle on Srivilliputtur - Athikulam main road near Kanmai Karai Irakkam, a two wheeler bearing Registration No.T.N.38 H 9294, belongs to the second respondent insured with the third respondent/Insurance Company, came in a rash and negligent manner and dashed against the petitioner and the petitioner sustained injury. Hence, the petitioner filed an application in M.C.O.P.No.225 of 2006 dated 18.09.2014, on the file of the Motor Accidents Claims Tribunal /



Sub-Court, Srivilliputhur, seeking compensation compensation of Rs.3,00,000/-

3. Before the Tribunal, on the side of the claimant, two witnesses viz., P.W.1 and P.W.2 were examined and sixteen documents viz., Exs.A.1 to A.16 were marked and on the side of the respondents, three witness viz., R.W.1 to R.W.3 was examined and six document was marked viz., Exs.R.1 to R.6.

4. The Tribunal, after considering the pleadings, oral and documentary evidences and arguments of the counsel for the appellant and claimants and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent act of the offending vehicle and directed the first and second respondent to pay a sum of Rs.3,05,954/-, as compensation.

5. Against which, the present appeal has been filed by the appellant/1st respondent, seeking direction to the third respondent/ Insurance Company to pay the compensation to the petitioner and recover the same from the owner of the vehicle.

6. The learned Counsel for the appellant would contend that the Tribunal ought to have considered that the policy was in force at the time of accident and therefore the third respondent/ Insurance Company cannot deny their liability. The Tribunal ought to have taken into consideration that the appellant is not the owner of the vehicle and considering his financial capacity, the Tribunal ought to have extended the benefit of discretion. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. The learned counsel for the third respondent would submit that based on the available oral and documentary evidences, the Tribunal has rightly come to the conclusion and arrived at correct compensation under various heads.

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

9. At this juncture, it relevant to extract the finding of the Tribunal regarding negligence and liability:

10.... From the perusal of the judgment of C.C.No.426 of 2005, it is held in the said judgment that the said one Vijayan was examined on the side of the accused and he has stated that he alone drove the vehicle. On the basis on evidence adduced by him the Judicial Magistrate Court comes to the conclusion that the prosecution has not proved and the first respondent alone had driven the vehicle at the time of alleged accident and accordingly he was acquitted.

11. Admittedly, in the present case, the said Vijayan has not been examined on the side of the first respondent. The proof required to establish the guilt



under Indian Penal Code is different for the proof to be established in compensation cases. From the perusal of the First Information Report, charge sheet and the Judicial Magistrate Court's Judgment. It is prima facie established that it is only the first respondent, who has driven the vehicle. Hence, on the basis of the evidence adduced by both the parties and the non-examination of the said Vijayan in the present case, it can be safely concluded that the accident has happened only because of rash and negligent act of the first respondent who was driving the vehicle of the second respondent and accordingly this point is answered.

10. On a reading of the finding of the Tribunal, it is very clear that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. Hence, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligence driving of the offending vehicle and hence, the Tribunal has directed the second respondent to pay the compensation to the claimant. In view of the above, this Court is of the view that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. However, since the driver of the offending vehicle did not possess any valid driving licence at the time of accident as contended by the Insurance Company, this Court is inclined to apply pay and recovery theory in this case, as per the decision of the Honourable Supreme Court in the case of **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

11. In the result, the Civil Miscellaneous Appeal is disposed of. The third respondent/ 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 same, with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. Consequently, connected Miscellaneous Petition is closed. The third respondent/Insurance Company is at liberty to recover the same from the owner of the vehicle per the decision of the Honourable Supreme Court in **Nanjappan Vs. Oriental Insurance Company Limited and Others**, reported in **2003(1)L.W. 77**.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal /
Srivilliputhur .

2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.P.SANTHOSH KUMAR, ADVOCATE IN SR No. 79518

DSK/RMK

TE/MR-KKR/SAR-2 : 19/12/2017 : 4P/4C

C.M.A (MD) No.298 of 2015
18.09.2017