



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No. 514 of 2016

and

C.M.P. (MD) No. 6401 of 2016

The Manager
National Insurance Company Limited,
Door No.92, Devarpuram Road,
Thoothukudi-628 003.

... Appellant / 3rd Respondent

Vs.

1.M.Bala Murugan	...1 st Respondent / Petitioner
2.M.Udaiyar	...2 nd Respondent / 1 st Respondent
3.A.Mohamed Hussain Subedhar	... 3 rd Respondent / 2 nd Respondent

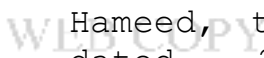
Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.02.2016 made in M.C.O.P.No.94 of 2013, on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate Court], Thoothukudi.

For Appellant	: Mr.J.S.Murali
For R1	: Mr.N.Ramesh Arumugam
For R2	: Mr.M.Maharaja
For R3	: Left

J U D G M E N T

The insurer has filed this appeal questioning the impugned award on the ground of negligence as well as quantum.

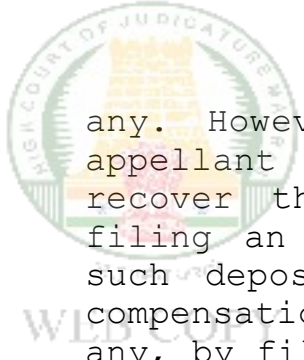
2. On 04.04.2013, one Balamurugan was travelling as a passenger in the car insured with the appellant. At about 06.00 a.m., when the car was going in the Thiruvananthapuram-Thoothukudi National Highway, a Tractor belonging to the second respondent herein (Udaiyar) dashed against the car. In the resultant accident, the claimant suffered grievous injuries. The



4. Contending that the entire negligence was only on the part of the driver of the Tractor, this appeal has been filed by the insurer.

6. I find force in the said submission. I hold that it was the tractor driver, who was entirely at fault. I come to this conclusion, because the owner of the tractor/second respondent herein did not even choose to controvert the case projected by the appellant herein. The second respondent herein remained *ex parte* before the Tribunal.

8. Therefore, the appellant insurer and the second respondent are directed to deposit their respective amount of compensation with interest at the rate of 7.5% per annum and costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited by them, if



any. However, invoking the principle of pay and recover, the appellant insurer, after paying the compensation amount, can recover the paid amount from the second respondent herein by filing an Execution Petition in the very same proceedings. On such deposit, the claimant is entitled to withdraw the entire compensation amount, less the amount already withdrawn by him, if any, by filing appropriate application.

9. The award dated 29.02.2016 made in M.C.O.P.No.94 of 2013, on the file of the Motor Accident Claims Tribunal [Chief Judicial Magistrate Court], Thoothukudi, is modified accordingly. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, C.M.P.(MD)No.6401 of 2016 is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate Court,
The Motor Accident Claims Tribunal,
Thoothukudi.

Copy to:

The Section Officer, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1cc to Mr.S.Murali Advocate in SR.NO.92615
+1cc to Mr.M.Maharaja Advocate in SR.NO.92763
+1cc to Mr.N.Ramesh Arumugam Advocate in SR.NO.92584

kmi

AE:CVC:SAR1:01/03/2018/3P/7C

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