

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 27.10.2017****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.M.A. (MD) No.509 of 2015**

S.Murugan ... Appellant/Petitioner

Vs.

1.G.Raja @ Rajkumar

2.Reliance General Insurance Company Ltd.,
Sri Meenakshi Plaza,
H.I.G.Plot No.55, Ist Floor,
80 feet Road, Anna Nagar,
Madurai.

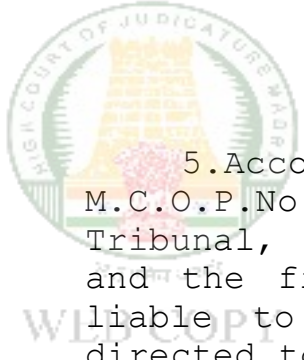
... Respondents/Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order passed in M.C.O.P.No.207 of 2011 dated 17.10.2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai.

For Appellant	: Mr.C.M.Arumugam
For Respondents	: No Appearance for R1 Mr.S.Srinivasa Raghavan for R2

JUDGMENT

The claimant is the appellant. The claimant was travelling in his two wheeler. An Yamaha motorcycle belonging to the first respondent herein and insured with the second respondent dashed against the claimant and caused him multiple injuries. The claimant was an inpatient for 16 days from 15.06.2011 to 30.06.2011. Considering the injuries suffered by him, the Tribunal awarded a sum of Rs.1,52,818/-. But, the second respondent insurance company was exonerated on the ground that the offending vehicle was driving by the person, who did not possess any valid driving licence. Even though, it is a breach of policy condition, on that sole ground, the insurance company cannot be exonerated totally. The insurer must pay the claimant to satisfy the award and recover the amount from the vehicle owner in the very same proceedings by filing E.P.. Instead of applying pay and recover principle, the Tribunal has fixed the liability only on the vehicle owner. Therefore, the award of the Tribunal calls for an interference.



5. Accordingly, the award dated 17.10.2014 made in M.C.O.P.No.207 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Sivagangai is modified and the first and second respondents are jointly and severally liable to pay the compensation and the second respondent is directed to deposit the entire compensation amount within 12 weeks from the date of receipt of a copy of this order along with interest @ 7.5.% per annum and costs from the date of petition till the date of realization. The claimant is entitled to withdraw the said amount. Thereafter, the second respondent is permitted to recover the same from the first respondent in these proceedings by filing execution petition.

6. The Civil Miscellaneous Appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Sivagangai.

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

+ 1 cc TO Mr.C.M.Arumugam , Advocate in SR No. 84439
+ 1 cc TO Mr.S.Srinivasa Raghavan , Advocate in SR No. 84038

Arul
AE/MR KKR/SAR2/18.12.2017/2P/5C

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