

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 31.07.2017****CORAM****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.M.A(MD)No. 1017 of 2013**

M.Packiam ... Appellant / Petitioner
Vs.

1.A.Muthiah

2.The Oriental Insurance Co. Ltd.,
represented through its
Divisional Manager,
No.1, Opp, to Crime Branch,
108, T.P.K.Road, Madurai-1. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.445 of 2006 on the file of Motor Accident claims Tribunal/Addl. District Judge/Fast Track Court-2, Madurai dated 26.04.2010.

For Appellant :Mr.K.Kumaravel
For R-1 : Mr.R.Sivakumar
For R-2 :Mr.K.Bhaskaran

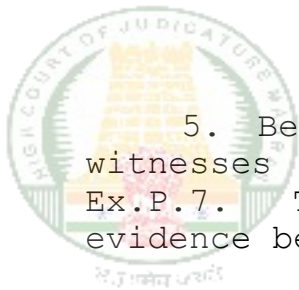
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 26.04.2010 made in M.C.O.P.No.445 of 2006 by the Motor Accident claims Tribunal/Additional District Judge/Fast Track Court-2, Madurai.

2. It is a case of injury sustained by the Petitioner/claimant in an accident, which took place on 31.10.2005 at about 08.00 p.m., at Madurai to Theni main road near Alagupillai compound in Atchampattu.

3. It is the case of the injured/claimant before the Tribunal that when she was standing near Alagupillai compound in Achampattu on the left side of the mud road in Madurai-Theni Main road, a TVS Suzuki motorcycle bearing registration No.TN 58 D 0254 belonging to the first respondent was driven by its rider in a rash and negligent manner and dashed against the petitioner. Due to the said accident, the injured sustained grievous injuries.

<https://hcservices.courts.gov.in/hcservices/> injured claimant filed an application in M.C.O.P.No.445 of 2006 by the Motor Accident claims Tribunal/Addl. District Judge/Fast Track Court-2, Madurai, seeking compensation.



5. Before the Tribunal, the appellant/claimant examined two witnesses as P.Ws.1 and 2 and marked seven documents as Ex.P.1 to Ex.P.7. The respondents did not let in any oral or documentary evidence before the Tribunal.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the TVS Suzuki motorcycle and fixed the liability on the owner of the vehicle and awarded compensation of Rs.10,000/- as compensation.

7. Against which, the appellant/claimant has filed this present appeal challenging the liability fixed on the second respondent/Insurance Company.

8. The learned counsel for the appellant/claimant submitted that the Tribunal erred in fixing the liability on the owner of the vehicle and the Tribunal ought to have fixed the liability on the Insurance Company. He further submitted that the Tribunal ought to have seen that when the owner of the vehicle set ex-parte before the Tribunal, the Tribunal has to prove that the vehicle has not been insured with the Insurance Company and therefore, the award of the Tribunal requires interference at the hands of this Court.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that based on the evidence, the Tribunal has rightly fixed the liability on the owner of the vehicle and exonerated the Insurance Company and therefore, the award of the Tribunal does not require interference.

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

11. Perusal of the award shows that second respondent/Insurance Company did not chosen to examine the official witness to prove that the driver of the offending vehicle did not possess any valid driving licence on the date of accident. Further, when a owner of the vehicle remained ex-parte, the Insurance Company has to prove that the driver of the vehicle was not having any driving licence on the date of accident. Therefore, the Insurance Company is liable to pay the compensation awarded by the Tribunal.

12. In the result, this Civil Miscellaneous Appeal is allowed and the award dated 26.04.2010 passed in M.C.O.P.No.445 of 2006 on the file of Motor Accident claims Tribunal/Addl. District Judge/Fast Track Court-2, Madurai, is hereby confirmed in respect of quantum, and in respect of liability, the second respondent/Insurance Company is liable to pay the compensation. Accordingly, the second respondent/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of



this order. On such deposit being made, the claimant is permitted to withdraw the said amount with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

WEB COPY

Sd/-
Assistant Registrar(CS-III)
/True Copy/

Sub Assistant Registrar

To,

1.The Additional District Judge,
Motor Accident claims Tribunal,
Fast Track Court-2, Madurai.

+1cc to Mr.K.BHASKARAN Advocate in SR. NO.68880

+1cc to Mr.K.KUMARAVEL Advocate in SR. No.68852

PM

JS/SKN.RSK/SAR.2/28.08.2017/3P-4C

C.M.A(MD)No. 1017 of 2013
31.07.2017