



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.1613 of 2013

The National Insurance CO.Ltd,
Branch Office,
Big street,
Kumbakonam

...Appellant/Respondent -2

Vs.

1.Sellakannu

...Respondent/Petitioner

2.R.Subha

...Respondent/Respondent-1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decreetal Order dated 07.11.2012 made in MCOP.No. 2018 of 2005 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruchirappalli and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan

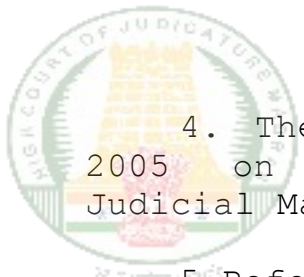
For Respondents : No Appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/respondent-2 against the award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Trichirappalli passed in M.C.O.P.No. 2018 of 2005, dated 07.11.2012.

2. It is the case of an accident causing injury, which took place on 01.12.2004 at about 13.30 hours near Karattampatti, Kattumurugan Kovil.

3. It is the case of the claimant before the Tribunal that when the petitioner was travelling as a load man in the first respondent's load auto bearing Registration No.TN-48 B-7311, from Kuruvikarankulam towards Thuraiyur, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which the vehicle got capsized. As a result, the petitioner sustained fracture on left hand and injuries all over his body and took treatment at various hospitals



4. The claimant filed an application in M.C.O.P.No.2018 of 2005 on the file of the Motor Accident Claims Tribunal/(Chief Judicial Magistrate), Trichirappalli, seeking compensation.

5. Before the Tribunal, the appellant/respondent-2 examined one witness as R.W.1 and marked one document as Ex.R.1 On the side of the respondent/claimant, two witnesses were examined as P.W.1 and P.W.2 and eight documents were marked as Ex.P.1 to Ex.P.8.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the auto bearing registration No.TN-48 B-7311 and therefore directed the second respondent to pay a sum of Rs.97,000/-to the claimant as compensation.

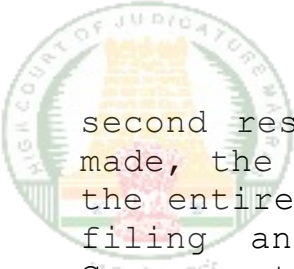
7. Against which, the appellant/Insurance Company filed the present appeal to set aside the award of the Tribunal. Though the present appeal has been filed on various grounds, at the time of arguments, the learned counsel for the appellant restricted his argument only on the ground of negligence.

8. This Court heard the submission of the learned counsel for the appellant and perused the materials available on record.

9. The learned counsel for the appellant/respondent-2 would submit that the Tribunal has not chosen to appreciate the scope and ambit of the liability of the insurer under Section 147 of the Act is not justified in holding that the injured had travelled in the goods carrier only as the owner of the goods and such a finding has been given by the Tribunal without appreciating the evidence available on records and hence, the award passed by the Tribunal has to be set aside.

10. A perusal of the award passed by the Tribunal clearly shows that the Tribunal has discussed in detail and found that due to the rash and negligent driving of the driver of the vehicle, which was insured with the second respondent, the vehicle got capsized and hence, directed the second respondent to pay the compensation to the petitioner and recover the same from the first respondent and therefore the interference of this Court is not necessary.

11. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 07.11.2012, passed in M.C.O.P.No.2018 of 2005, on the file of the Motor Accidents Claims Tribunal/ Chief Judicial Magistrate, Trichirappalli is hereby confirmed. The appellant/Insurance Company is directed to deposit the 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 recover the same from the



second respondent/owner of the vehicle and on such deposit being made, the the first respondent/petitioner 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(crl sdie)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Tiruchirappalli.

+1cc to Mr.S.Srinivasa Raghavan, Advocate Sr.No.79219

+1cc to Mr.K.P.Narayana Kumar, Advocate Sr.No.78931

DSK

VB/SKN/RSK/SAR1/27/10/2017/3P/4C

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