BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2017

PRONOUNCED ON : 07.12.2017

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.811 of 2011

S.P.M.Paulraj ... Appellant/Claimant

vs.

1.A.Saveria Pitchai

2.M/s.National Insurance Company Limited,
Through its Divisional Manager,
Divisional Office, North Veli Street,
Madurai. ... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award passed in M.C.O.P.No.124 of 2005, dated 25.01.2011 on the file of the Motor Accident Claims Tribunal, Second Additional Subordinate Court, Madurai.

For Appellant	:	Mr.P.C.Saravanan
For R - 1	:	Given up
For R - 2	:	Mr.N.Murugesan

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award, dated 25.01.2011, made in M.C.O.P.No.124 of 2005, on the file of the Motor Accident Claims Tribunal, Second Additional Subordinate Court, Madurai.

2.The case of the claimant before the Tribunal is that when the claimant was travelling in his car bearing Registration No.TN-58-J-9279 from Madurai to Virudhunagar, nearing Mullai Nagar City Bus stop, Madurai - Thirumangalam Main Road, a container lorry bearing Registration No.TN-69-C-1959, driven by its driver in a rash and negligent manner, came behind the claimant's vehicle, and dashed against the back portion of the claimant's vehicle. In the said impact, the claimant's vehicle was moved further and got stuck under the city bus which was infront of it and the vehicle of the claimant was totally damaged and cramped. Regarding the said accident, Thirunagar Police has registered a case in Crime No.50 of 2004 under Section 279 I.P.C against the driver of the first respondent and the said driver was charge-sheeted and he pleaded guilty before the Judicial Magistrate No.I, Madurai. The claimant submitted that he purchased the vehicle from Annamalis Agencies, Coimbatore on

15.12.2003 under Hire Purchase scheme and he paid a cost of Rs.6,71,328/-. The said vehicle was totally damaged within 57 days from the date of purchase and the claimant received a sum of Rs.2,64,722/- from the National Insurance Company, Chennai and he sold the said vehicle for a sum of Rs.2,50,000/-. Hence, he received a sum of Rs.5,14,722/- from the Insurer as well as by selling the vehicle through the Insurer. The process of OD settlement took a long time and the damaged vehicle was stationed at the seller's premises and the seller collected a sum of Rs.9,990/- from the claimant before it was sold to one Fakrudeen. For buying a new vehicle, though he received a sum of Rs.5,14,722/-, he claimed a sum of Rs.1,66,596/- as compensation from the second respondent.

3.The second respondent/National Insurance Company filed a counter-affidavit denying the manner of accident, as stated in the claim petition and further stated that the claimant's vehicle was damaged and as per the policy condition, a sum of Rs.2,64,722/- was paid as a full and final settlement and stated that this petition is not maintainable. The claimant's vehicle had only simple damages and according to surveyor's report, the Insurer of the claimant's vehicle has settled the amount as a full and final and no claim against the third party's vehicle. As per the policy condition, the second respondent has to pay any compensation for third party's vehicle damages only a sum of Rs.6,000/- and the said limit of payment is mentioned in the policy itself. The quantum of compensation of Rs.1,66,596/- claimed by the claimant is excessive and prayed for dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, one witness viz., P.W.1 was examined and twenty five documents viz., Exs.P.1 to P.25 were marked and on the side of the respondents, one witness viz., R.W.1 was examined and two documents viz., Exs.R.1 and Ex.R.2 were marked.

5.The Tribunal, after considering the pleadings, both the oral and documentary evidence and the arguments of the learned counsel appearing on either side and also appreciating the evidence on record, awarded a sum of Rs.1,000/- as compensation to the claimant and directed the second respondent-National Insurance Company to pay the compensation amount.

6.Against the award made in the claim petition, the appellant/claimant has filed the present Civil Miscellaneous Appeal.

7.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8.The learned counsel for the appellant/claimant submitted that the Tribunal ought to have awarded a sum of Rs.1,66,596/- as compensation for damages of vehicle and the Tribunal had erred in awarding a very meagre amount of Rs.1,000/- as compensation which is against law while holding that the first respondent was the wrong doer and was rash and negligent in driving. The Tribunal failed to consider the fact that the claim is a third party claim in respect of the vehicle owned by the appellant/claimant against the first respondent and insured with the second respondent. The third party claim in respect of a total loss suffered by the claimant to his vehicle in view of the accident caused by the vehicle insured with the second respondent and he has not made any claim from the Insurance Company in which his vehicle was insured.

9.It is seen from the evidence of P.W.1-the claimant that he stopped his vehicle near Mullai Nagar Bus stop behind the State Transport Corporation bus. At that time, a container lorry bearing Registration No.TN-69-C-1959, which was coming from behind, dashed on the car and due to the same, he went and stuck in between the two vehicles and his car was damaged in total and an F.I.R has been registered and the lorry driver has been made as an accused and a criminal case has been filed and the lorry driver has admitted his crime. The appellant claimed that the Qualis car was purchased for a sum of Rs.5,84,970/-, but he spent for extra fittings a sum of Rs.9,950/-, for registering the same, he spent a sum of Rs.35,000/-, for getting fancy number, he spent a sum of Rs.8,000/- and for bringing the car from Coimbatore to Madurai, he incurred an amount of Rs.2,000/- and for getting the Insurance Policy for the said vehicle, he had paid an amount of Rs.21,441/- and totally he had spent a sum of Rs.6,71,328/-, when he claimed the compensation amount by filing the claim form, the same was considered by the Insurance Company and a sum of Rs.2,64,722/- was paid to him and the second installment amount of Rs.2,90,000/- was also paid by selling the said vehicle and in total, a sum of Rs.5,54,722/- has been received by the claimant through the second respondent/National Insurance Company.

10.Further, it is seen from the records that the claimant has insured his vehicle only for an amount of Rs.5,55,722/- for the sum assured and paid a sum of Rs.21,441/- as premium and he can claim only that amount from the Insurance Company and the other amounts spent for buying the spare parts, for registration charges, transportation and Insurance premium cannot be claimed by the claimant and only the amount of claim/sum assured which was Rs.5,55,722/- and he has received Rs.5,54,722/- in two installments and only a sum of Rs.1,000/- alone regarding the amount is left to be received by the claimant and the Tribunal has rightly concluded that the claimant is entitled only for a sum of Rs.1,000/- to be paid by the second respondent/National Insurance Company as a full and final settlement and awarded Rs.1,000/- with 7.5% interest.

11.After going through the materials available on record, this Court finds that the appellant/claimant cannot claim for the same car one as an insurer and another as damages and the Tribunal has rightly concluded that only the remaining amount of Rs.1,000/- which has been left out has to be paid and nothing more. The appellant has spent a sum of Rs.1,66,596/- only for his satisfaction and this cannot be saddled upon the insurer as a claim and there was no third party insurance covered, since this vehicle was not a cause for any accident and it has been damaged by some other vehicle and only for that, the entire amount of sum assured has been received and accepted, this Court finds that the appellant/claimant is not entitled to receive any other amount from the Insurance Company. All the extra fittings which was spent, such as registration, for getting fancy number, for bringing the vehicle from Coimbatore to Madurai and Insurance, all these things cannot be paid by the Insurance Company as this does not come under the head of compensation and only for the limited liability, wherein, the sum assured was paid by the Insurance Company and on the above grounds, this Civil Miscellaneous Appeal is liable to be dismissed.

12.In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 25.01.2011, made in M.C.O.P.No.124 of 2005, on the file of the Motor Accident Claims Tribunal, Second Additional Subordinate Court, Madurai, is hereby confirmed. The second respondent-National Insurance Company is directed to deposit the award amount, along 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 entire award amount, along with accrued interest and costs, by filing necessary petition before the Tribunal. No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Second Additional Subordinate Court,
Madurai.

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

+One cc to Mr.N.Murugesan, Advocate, SR.No.91492
ps
RL/4C/4P/JC/SAR1/22/12/2017 C.M.A(MD)No.811 of 2011

07.12.2017