

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1003 of 2011

K.Velusamy

... Appellant/Petitioner

Vs.

1.M.Sekar

2.Tamilselvan

3.M/s.Iffco Tokkio General Insurance Co.Ltd,
TULS Chambers, 3rd Floor,
T.V.Swamy Road (W),
R.S.Puram, Coimbatore - 641 002.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 as amended by Act 54 of 1994 to set aside the order made in M.C.O.P. No.1127 of 2006 dated 02.06.2010 on the file of the Motor Accident Claims Tribunal cum I Additional Sub Judge, Salem by fixing the liability on the 3rd respondent.

For Appellant : Mr.C.Kulanthaivel

For Respondent No.3 : Mr.M.B.Gopalan

JUDGMENT

The appellant is the claimant in MCOP. No.1127 of 2006 on the file of the I Additional Sub Court, Salem. He filed the said petition claiming compensation of Rs.3,00,000/- for the injury sustained by him in the road accident that took place on 11.08.2006. The Claim petition was filed under Section 166 of the Motor Vehicles Act.

2. On 11.08.2006 at about 10.40 p.m., the Claimant was travelling as a pillion rider in a two wheeler bearing Registration No.TN 28 R 4739 driven by one Sekar and both of them were preceeding towards Kumarapalayam from Salem. When they were nearing Tamil Nadu Electricity Board, Kumarapalayam, one Krishnan attempted to cross the road. According to the appellant the rider of the two wheeler rode the two wheeler rashly and negligently and hit the said Krishnan, as a result of which, the appellant was thrown out of the two wheeler and sustained injuries on his nose and on his mouth resulting in breakage of the posterior teeth and he took treatment in Erode

Trust Hospital. A case was registered by the Kumarapalayam Police Station against the first respondent (who is the rider of the two wheeler) in Crime No.413 of 2006 for the alleged offences punishable under Sections 279, 337 and 338 of the Indian Penal Code.

3.The learned I Additional Sub Judge, Salem after full trial in M.C.O.P. No.1127 of 2006 has held that since the second respondent had given his two wheeler to a person, who does not own any driving license, the Insurance Company is not liable to pay compensation to the claimant.

4.Mr.C.Kulanthaivel, learned counsel appearing for the appellant contended that the Insurance Company has not examined the RTO to prove that the rider of the two wheeler did not possess any valid driving license on the date of the accident. In the instant case the 3rd respondent had issued a notice dated 27.11.2009 (Ex.R4) to the rider of the two wheeler (1st respondent) to produce a copy his driving licence and the same was served on him on 15.12.2009 as evidenced by the postal acknowledgement card Ex.R5. Even after receipt of the said notice the 1st respondent did not produce the driving licence. The trial Court in the given circumstance had come to a conclusion that the 1st respondent did not possess a valid driving licence on the date of the accident. The Motor Vehicle Inspector also in his report has contended that no driving licence was produced by the rider of the two wheeler. Though the finding of the learned I Additional Sub Judge, Salem with regard to non-possession of a valid deriving license is correct, the dismissal of the claim petition as against the 3rd respondent Insurance Company is wrong. It is trite law that when a person drives a vehicle without a driving license, the Insurance Company should be asked to pay the award amount to the claimant and recover the same from the owner of the vehicle. In the instant case, the learned I Additional Sub Judge, Salem has dismissed the claim petition as against the Insurance Company, which warrants interference by this Court.

5. In the facts and circumstances of the present case the appeal is partly allowed and the Insurance Company is directed to pay the award amount of Rs.1,18,082/- together with interest at the rate of 7.5% per annum to the claimant and recover the same from the first and second respondents on the same cause of action. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

rkp

To

1. The the Motor Accident Claims Tribunal Cum
I Additional Sub Court,
Salem.

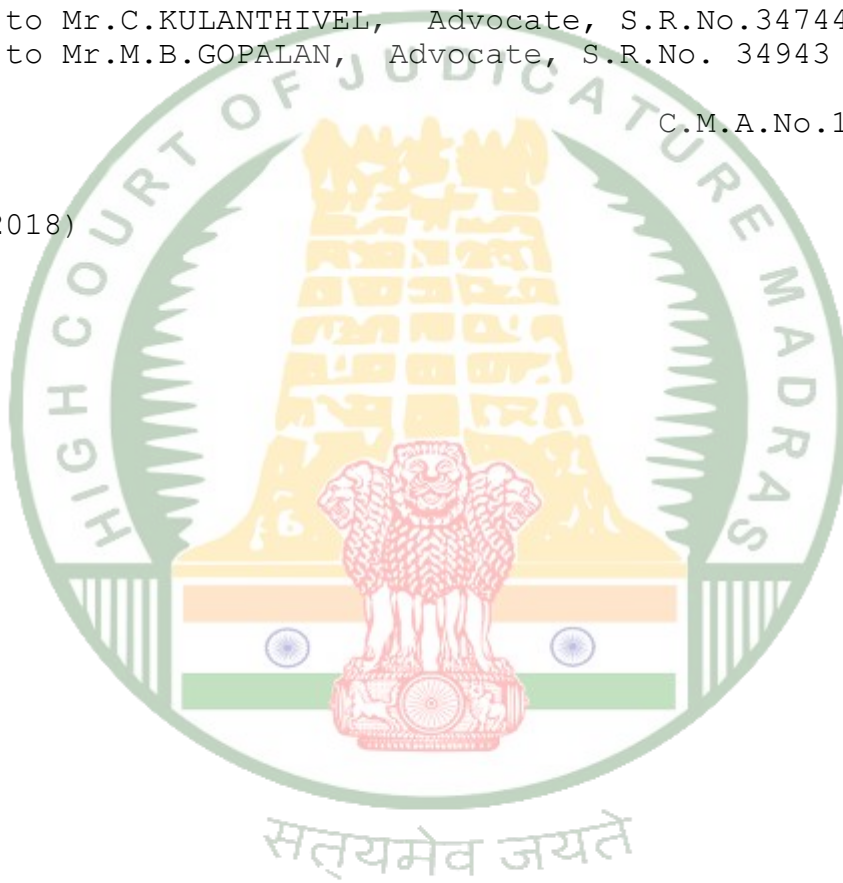
2. The Section Officer,
V.R. Section,
Madras High Court. (2 copies)

+1cc to Mr.C.KULANTHIVEL, Advocate, S.R.No.34744

+1cc to Mr.M.B.GOPALAN, Advocate, S.R.No. 34943

C.M.A.No.1003 of 2011

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TR(14/06/2018)



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