

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2279 and 2280 of 2015
and M.P.Nos.1 and 1 of 2015

The National Insurance Co. Ltd.,
No.7, Raja Street,
Gobichettipalayam and Taluk,
Erode District.

.. Appellant in both C.M.As.

Vs.

K.S.Jeyakumar

.. Respondent in C.M.A.No.2279/2015

1.J.Santhiya

2.S.Jeyakumar

.. Respondents in C.M.A.No.2280/2015

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the common Award and Decree dated 30.01.2015, made in MCOP.Nos.361 of 2013 and 1 of 2014, on the file of the Subordinate Judge, (Motor Accidents Claims Tribunal), Gobichettipalayam.

For Appellant : Mr.S.Vadivel
(in both C.M.As.)

For Sole Respondent: Mr.P.Saravana Sowmiyan
(in C.M.A.No.2279/2015)

For R1 : Mr.P.Saravana Sowmiyan
(in C.M.A.No.2280/2015)

For R2 : No appearance
(in C.M.A.No.2280/2015)

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common Award and Decree dated 30.01.2015, made in MCOP.Nos.361 of 2013 and 1 of 2014, on the file of the

Subordinate Judge, (Motor Accidents Claims Tribunal), Gobichettipalayam.

2.Both the appeals are arising out of the same accident and hence, they are disposed of by this common judgment.

3.The appellant-Insurance Company challenging the award fastening the liability on them to pay the compensation to the claimants respectively, has come out with the present two appeals.

4.Heard the learned counsel for the parties in C.M.A.No.2279 of 2015 and learned counsel for the appellant and 1st respondent in C.M.A.No.2280 of 2015 and perused the materials available on record.

5.The learned counsel for the appellant in both the appeals submitted that the respondent in C.M.A.No.2279 of 2015 is the husband of first respondent in C.M.A.No.2280 of 2015. In M.C.O.P.No.1 of 2014 filed by the wife of the respondent in C.M.A.No.2279 of 2015/first respondent in C.M.A.No.2280 of 2015, she has pleaded that the accident occurred only due to the rash and negligent driving by the respondent in C.M.A.No.2279 of 2015 herein. The learned counsel for the appellant further contended that the Tribunal has framed an issue "Whether the accident has occurred due to the rash and negligent driving of the driver of the Bolero car bearing Registration No.TN-38-AH-1078?". The Tribunal has not given any finding on this issue. The respondent in C.M.A.No.2279 of 2015 has stated in the claim petition that on seeing a vehicle coming in the opposite direction with dazzling head light, he turned the vehicle to the left side of the road to avoid major accident, as a result of which he and the first respondent in C.M.A.No.2280 of 2015 were injured. When the accident occurred due to the rash and negligent driving by the respondent in C.M.A.No.2279 of 2015 himself, the appellant is not liable to pay any compensation to the respondent.

6.In support of his contentions, the learned counsel for the appellant relied on the judgment reported in 2007 (2) TN MAC 106 (SC) [Oriental Insurance Co. Ltd., Vs. Premlata Shukla and others]:

"10.The Insurer, however, would be liable to re-imburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an Application under Section 166 of the Act."

7.From the award of the Tribunal, it is seen that the Tribunal has framed an issue with regard to negligence on the part of the driver of the Bolero Car, the respondent in C.M.A.No.2279 of 2015, but has not given any finding in this regard. The claim petition filed by the first respondent in C.M.A.No.2280 of 2015 is under Section 166 of the Motor Vehicles Act, 1988. In such case, the respondent has to prove the negligence in order to get compensation.

8.If Tribunal comes to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the Bolero Car i.e., the respondent in C.M.A.No.2279 of 2015, then the Tribunal ought to have decided whether any compensation has to be awarded to the respondent in C.M.A.No.2279 of 2015 or not. Without fixing the negligence, the Tribunal has committed an error in awarding compensation to the respondent/respondents respectively in both the appeals. The judgment of the Hon'ble Apex Court relied on by the learned counsel for the appellant is squarely applicable to the facts of the present case.

9.In view of the above facts, without deciding both the Civil Miscellaneous Appeals on merits, the common award of the Tribunal is set aside and M.C.O.P.Nos.361 of 2013 and 1 of 2014 are remanded for fresh consideration to decide on merits and in accordance with law.

10.The learned counsel for the appellant submitted that at the time of admission, as per the direction of this Court, the appellant has deposited the entire award amount together with interest to the credit of M.C.O.P.Nos.361 of 2013 and 1 of 2014 respectively and prayed to keep the amount deposited in abeyance till the disposal of the M.C.O.Ps.

11.The Tribunal is hereby directed to deposit the amounts deposited by the appellant to the credit of M.C.O.P.Nos.361 of 2013 and 1 of 2014 , in any one of the Nationalized Bank, initially for a period of one year and periodically renew thereafter. With the above direction, both these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Gobichettipalayam.

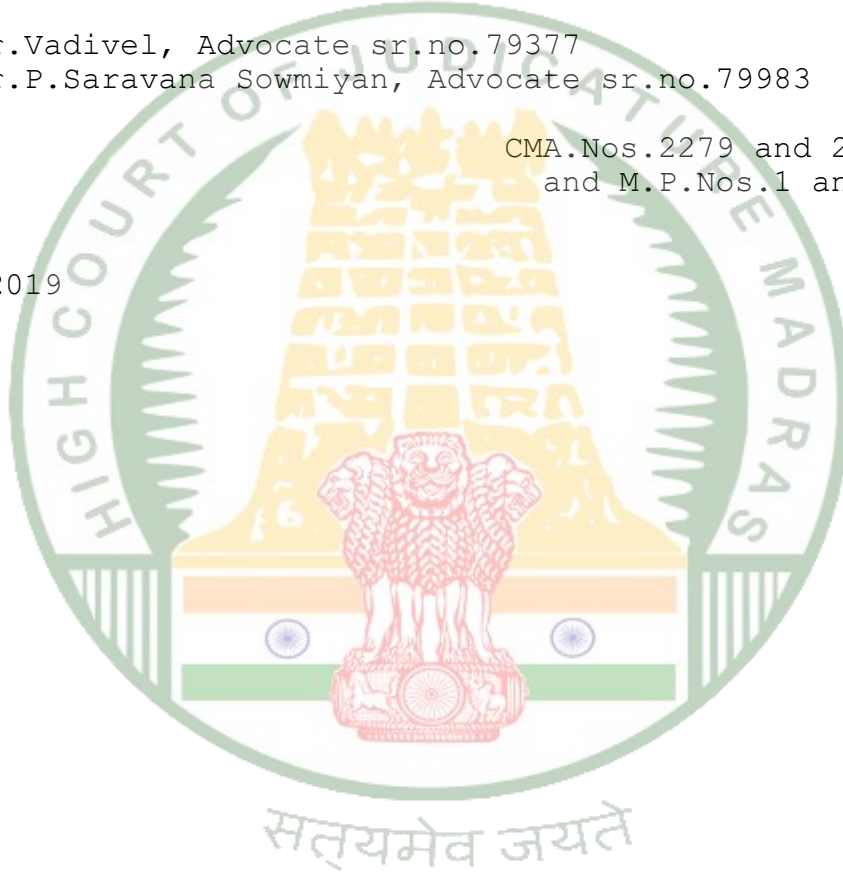
2.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+1cc to Mr.Vadivel, Advocate sr.no.79377

+1cc to Mr.P.Saravana Sowmiyan, Advocate sr.no.79983

CMA.Nos.2279 and 2280 of 2015
and M.P.Nos.1 and 1 of 2015

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