

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 27.08.2018

JUDGMENT PRONOUNCED ON : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1434 of 2011
&
Miscellaneous Petition.Nos. 1 of 2011

M/s. ICICI Lombard General Insurance Co. Ltd
Swarnapuri Plaza
Omalar Main Road
Salem

...Appellant/2nd Respondent

Vs

1. Arunachalam
S/o Iyyamuthu
Morikadu
Murugapatty
Sivathapuram
Salem

...1st Respondent/Petitioner

2. Soundararajan
S/o Ponnusamy
1/33A New No.1/189
Murugapatty
Sivathapuram, Salem

3. The Managing Director
Tamil Nadu State Transport corporation Limited
Salem Region (Division I)
Salem

... Respondents 2 & 3/Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 31.08.2010 made in MCOP No.516 of 2007 on the file of Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Salem.

For Appellant : Ms.R. Sreevidhya

For Respondents : R1 - Mr. K. Kuppusamy
R2 - Exparte
R3 - D. Venkatachalam

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claim Tribunal, Salem in MCOP No.516 of 2007, the appellant herein who is the 2nd respondent in Claim petition filed this appeal, in which he is seeking the relief to grab recovery right for recovering the award amount from the owner of the vehicle. In the Claim Tribunal, the 1st respondent had filed a claim petition under Section 166 of Motor Vehicles Act, in which he claimed a compensation of Rs.5,00,000/-. After the elaborate enquiry, the claim Tribunal awarded compensation of Rs.1,62,032/- with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

2) In the claim Tribunal, the case of the petitioner is as follows.

2.1. On 18.04.2007, at about 4.45 am, when the petitioner was travelling as a load man in the 2nd respondent Minidoor Auto bearing Reg.No. TN 30 K 3678 near SC Brothers bus shed in Elampillai Salem Main Road. The Driver of the auto drove the vehicle in a rash and negligent manner and tried to over take the another vehicle, which was also proceeded on the same direction. Due to that, the Mini Door Auto lost it control and hit the 3rd respondent bus bearing Reg. No. TN 27 N 1185 coming on the opposite side and both the vehicles were damaged. Further, the petitioner sustained severe fracture and injuries all over the body. Immediately he was admitted at Salem Government Hospital for treatment and still he is under treatment. At the time of the accident, the petitioner is self employed and was earning Rs.5000/- per month. It is stated that due to the injuries sustained by the petitioner, he is not able to do his regular work and sought a sum of Rs.5,00,000/- as compensation from the appellant as well as from the 2nd respondent in this appeal, who are the insurance company and owner of the vehicle respectively.

3) On the other hand, opposing the claim of the petitioner, the appellant herein filed a Counter. The appellant Insurance company denied the accident and stated that only due to the rash and negligence of the driver of the another vehicle, the accident occurred. The Claim of the petitioner about the injuries suffered is denied. The age, avocation and income are also denied. The claim of the petitioner is exorbitant one. Thus the 2nd respondent /appellant sought for dismissal of the claim petition. Further, it was stated that the driver, who drove the Auto is not having any valid Driving License for driving the Auto. Accordingly, the owner of the Auto violated the policy conditions. Thereby, he is not having any liability to pay the compensation to the injured.

4) Before the Tribunal, the claimant examined himself as PW 1 and the Doctor who issued the Disability Certificate to PW 1 was examined as PW 2. On the side of the petitioner, 6 documents were exhibited as Ex.P.1 to Ex.P.6. On the side of the appellant / 2nd respondent, one Selvakumar was examined as RW 1 and 3 documents were exhibited as Ex.R1 to Ex.R.3.

5) Now on going through the findings arrived by the Tribunal, it was decided that the appellant and the 2nd respondent in this appeal are jointly and severally liable to pay the compensation. Further, Rs.1,62,032/- was awarded as a total compensation.

6) The learned Counsel appeared for the appellant would submit that in the award passed by the Claim Tribunal, the liability was wrongly fastened on the appellant, without giving any right to recovering the award amount from the owner of the vehicle. Otherwise, he did not dispute the findings arrived by the Tribunal in respect to the negligence of the Auto driver as well as the above quantum arrived by the Tribunal.

7) The learned Counsel appeared for the 1st respondent/petitioner would not raise any objection for granting relief sought for by the appellant. In the claim Tribunal itself, the owner of the vehicle / 2nd respondent who is the 1st respondent in the claim application remained exparte.

8) In the said circumstances, in the Claim Tribunal, the copy of the charge sheet which filed in a case registered by the police have been marked as Ex.P.2. In the said document, it was alleged that the driver of the Auto committed an offence under Section 279 and 338 of IPC and 3 r/w 181 of MV Act. So the provisions of Law clearly established that at the time of accident, the driver of the vehicle did not possess a valid Driving License. Moreover, at the time of accident, the injured was travelled as a load man. The said aspects clearly established that the owner of the vehicle violated the policy conditions. Accordingly, the appellant Insurance Company is not liable to pay the compensation. However, it is the settled position that if the owner of the vehicle violated the policy conditions, it is necessary to direct the insurer to pay the compensation with liberty to recover the said compensation from the owner of the vehicle without filing any formal application. This Court has also followed the said principle and accordingly this Court directs the insurer to pay the compensation to the claimant. Further, liberty is granted to him to recover the said amount from the owner of the vehicle without any formal application. The other conditions found in the award in respect to interest is unaltered.

11) In the result, the Civil Miscellaneous appeal is allowed. There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vrn

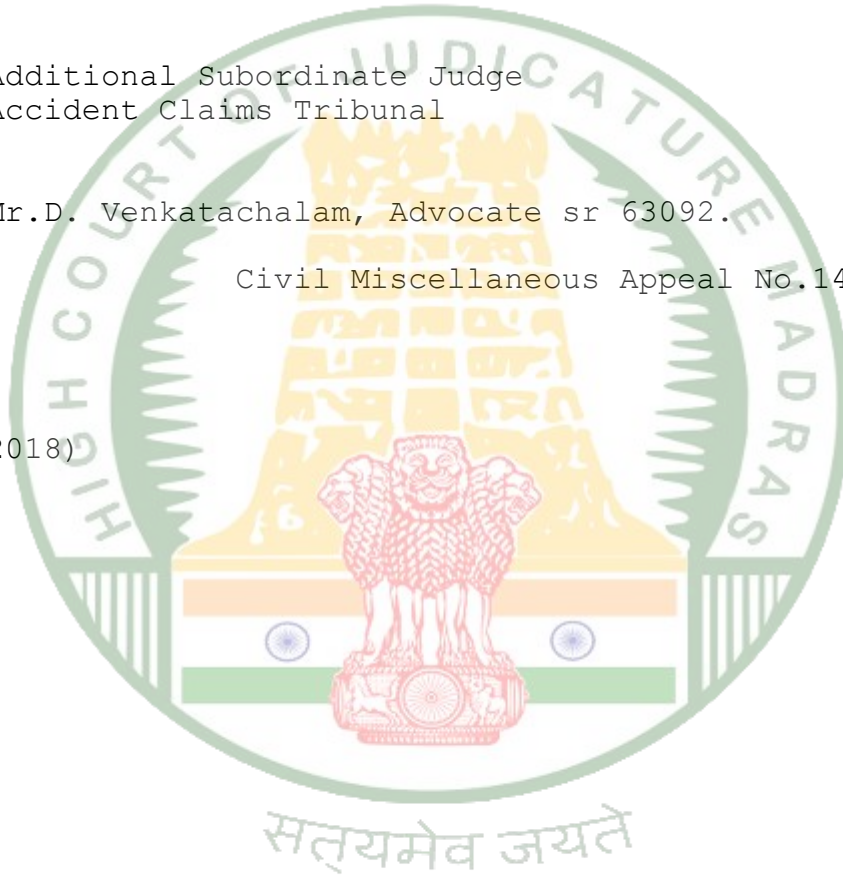
To

1. The I Additional Subordinate Judge
Motor Accident Claims Tribunal
Salem.

+1 CC to Mr.D. Venkatachalam, Advocate sr 63092.

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SJ(CO)
SP(16/11/2018)



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