

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2578 of 2015
and M.P.No.1 of 2015

United India Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.235, Gandhi Market Road,
Arani. ... Appellant

Vs.

1.R.Manoharan
2.S.Rajasekar
3.D.Sigamani (Died) ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 19.11.2012, made in M.C.O.P.No.135 of 2004 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Arani.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.P.Satheesh Kumar

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 19.11.2012, made in M.C.O.P.No.135 of 2004 on the file of the Sub Court, (Motor Accidents Claims Tribunal), Arani.

2.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

3.According to the 1st respondent/claimant, the accident occurred due to the rash and negligent driving by the 3rd respondent, driver of the Maruti Car belonging to the 2nd respondent. The 2nd respondent in the counter statement, denied that the accident occurred due to the rash and negligent driving by the driver of the Maruti Car, 3rd respondent herein and contended that on humanitarian grounds, he took the 1st

respondent to the hospital and informed the police that the accident occurred due to the negligent act of the 1st respondent. The police registered FIR on 3rd respondent, driver of the car, in view of the fact that the car is a heavy vehicle than the Motor Cycle. The 3rd respondent was acquitted in criminal case and contended that the respondents 2 and 3 are not liable to pay compensation.

4. According to the appellant, the Tribunal failed to see that the case of the 1st respondent/claimant is that the accident occurred only due to the rash and negligent driving by the 3rd respondent, driver of the car and hence filed claim petition against the respondents 2 and 3. Therefore, the claim petition filed against the appellant is not maintainable under Section 166 of the Motor Vehicles Act. The policy taken by the 1st respondent is only an Act Policy and no extra premium was paid by the 1st respondent and hence, the 1st respondent is not entitled to compensation for personal injury, from the appellant.

5. From a reading of the award of the Tribunal, it is seen that the Tribunal has not given any specific finding with regard to the negligence, which caused the accident. The Tribunal has not given a finding whether the 3rd respondent is responsible for the accident or 1st respondent is responsible for the accident, except referring to acquittal of 3rd respondent in criminal proceedings on benefit of doubt. In view of the same, the award of the Tribunal directing the appellant-Insurance Company and the respondents 2 and 3 to pay the compensation without any appreciation, is set aside and the claim petition in M.C.O.P.No.135 of 2004 is remanded to the Tribunal for fresh disposal on merits, in accordance with law, with the available materials on record.

6. In the result, this Civil Miscellaneous Appeal is allowed. Since the claim petition is of the year 2004, the Tribunal is directed to dispose of the same, within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

gsa

To

The Subordinate Judge,
(Motor Accidents Claims Tribunal), Arani.

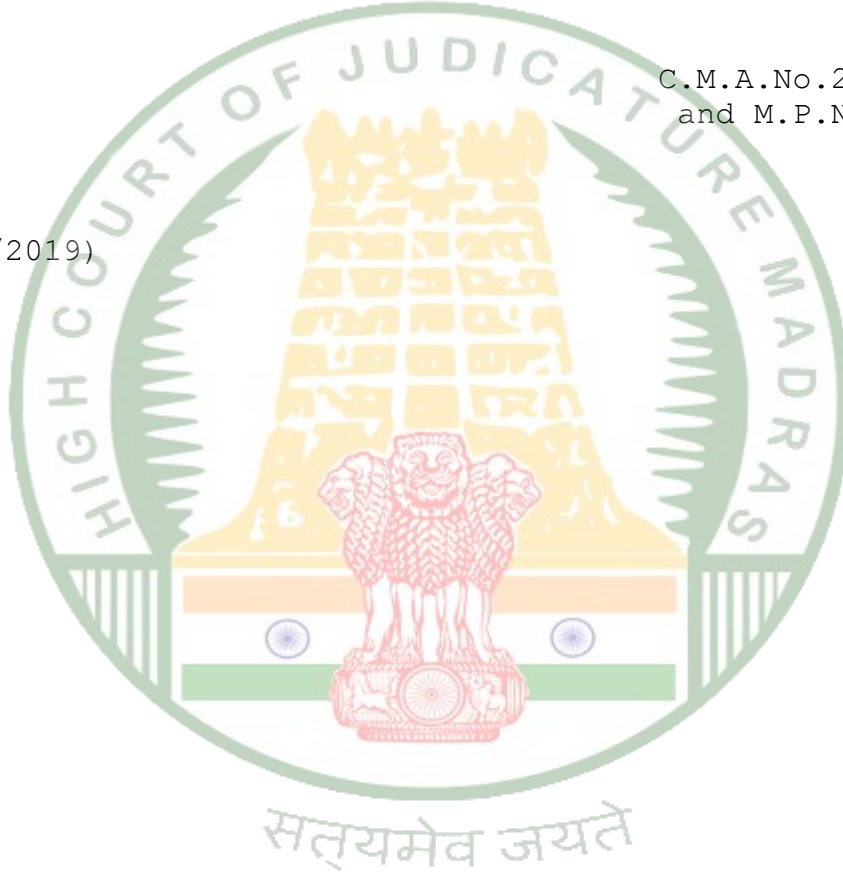
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The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.P.Satheshkumar, Advocate SR.No.84859

C.M.A.No.2578 of 2015
and M.P.No.1 of 2015

MG (CO)
GMY (07/02/2019)



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