

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.51 of 2015

and

M.P.No.1 of 2015

The National Insurance Company Limited,
Represented by its Branch Manager,
Branch Office, Anuradha Complex,
3rd Floor, No.333, Bangalore Road,
Krishnagiri -635 001. Appellant/2nd Respondent

Vs

1.M.Ramaswamy1st Respondent/Petitioner
2.P.Santhamoorthy2nd Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 20.08.2014 in M.A.C.T.O.P.No.2514 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant : Ms.N.B.Surekha

For Respondents: Mr.M.Selvam (for R1)

No Appearance (for R2)

ORDER

The present appeal arises out of the award dated 20.08.2014 in M.A.C.T.O.P.No.2514 of 2013 by the learned Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri.

2.I heard M/s.N.B.Surekha, learned counsel for the appellant and Mr.M.Selvam, learned counsel for the 1st respondent and perused the materials available on record and Judgments produced by either parties. No representation on behalf of the 2nd respondent.

3.The claimant had contended that he was a passenger in an auto rickshaw without Registration. The driver of the auto drove

the same in a rash and negligent manner, as a result of which the auto capsized and the petitioner was grievously injured in the said accident along with other passengers. The accident took place on 10.9.2010 and the claimant was hospitalized and he was admitted as an inpatient at Government Hospital, Krishnagiri and later he took treatment at a Private Hospital. The Guruparapalli Police have registered a case against the driver of the auto in Cr.No.261 of 2010. The insurer is liable to pay compensation.

4.The appellant had contended that the auto only had a temporary certificate of Registration and that the vehicle was classified as:

"Three wheeler Private - 028". The vehicle did not have a valid permit, fitness certificates, since all these are in violation of Insurance policy condition the insurer is not liable to pay compensation.

5.On the question of negligence, the petitioner was admittedly a passenger of the auto. On 10.09.2010 the driver of the auto had driven the auto which is a new vehicle. The driver of the auto drove the auto in a rash and negligent manner and caused the vehicle to over turn. In the said accident the petitioner and other passengers were injured. A case in Crime No.261 of 2010 has been registered against the auto driver. It is clear that the accident happened only due to the rash and negligent driving of the driver of the auto.

6.Since it is decided that the accident took place only because of the negligence of the auto driver, the question of liability comes up. The auto is insured with the appellant herein. The petitioner has marked Ex.P3 Insurance Policy which is valid from 08.09.2010 to 07.09.2011 that at the time of accident there was a valid Insurance Policy. Further the driving licence of the driver of the auto is marked as Ex.P4. The licence is valid and the driver is licenced to drive transport vehicles. However the appellant have contended that at the time of accident the auto did not have a valid permit or registration. The auto is admittedly a brand new vehicle purchased on 9.9.2010. The vehicle has a temporary registration No.TN 22 TMP 2785. This registration is valid until the vehicle is registered. The appellant had issued a cover note only in respect of the said temporary registration. Which means that the registration is very much valid. The auto is meant to be a commercial vehicle and it would take a few days to obtain all the certificate. The owner of the vehicle can ply the vehicle on the road with the temporary certificate. In fact that is why the insurer had insured the vehicle even before the same leaves the show room. The policy is valid and in force at the time of the accident. The respondent had examined RW1 and RW2. RW2 during his cross examination had stated that the Insurer is liable to

pay compensation since the vehicle has a temporary registration. It is the opinion of this court that the Insurer cannot escape from his liability on such grounds. Specially so in 3rd party claims. There was a valid policy and a passenger cannot be expected to seek information about registration or permit before travelling. Further it is admitted by the Insurer that the temporary registration is valid and that they are liable to pay compensation. Thus the appellant is liable to pay compensation to the claimant.

7.The petitioner has marked Ex.P2 Accident Register issued by the Government Head Quarters Hospital, Krishnagiri which shows that the claimant suffered (1). 2 x 1 cm sized contusion on right parental region, (2). Mild tenderness over a anterior chest wall with fracture of 2, 3, 4, ribs on the anterior aspect. The injuries are admittedly grievous in nature. The disability certificate is marked as Ex.P6 which shows that the claimant had suffered 20% disability. The tribunal had awarded a sum of Rs.60,000/- for permanent disability. The petitioner has claimed that he was doing cattle business and earns 10,000/- per month. Since there was no income proof the tribunal took the monthly income as Rs.5,000/- and arrived at loss of income as Rs.15,000/-, Tribunal awarded Rs.15,000/- for transportation, Rs.15,000/- for attender charges Rs.30,000/- for pain and suffering and arrived at a total compensation of Rs.1,50,000/- which is reasonable.

***Since, it is found that the owner of the vehicle/2nd respondent herein is liable to pay the compensation, the National Insurance Company/appellant herein is directed to pay the award amount with 6% interest from the date of petition till the date of payment and recover the same from the owner of the vehicle/2nd respondent herein. In the result, this appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No Costs.**

Sd/-

Assistant Registrar(CS III)
Dated:07/03/2019

*Amended as per order of
this Court dated 15.03.2019
Assistant Registrar(CS III)
Dated:16/08/2019

//True Copy//

Sub Assistant Registrar

To

The Special Sub Judge,
The Motor Accident Claims Tribunal,
Krishnagiri.

To be substituted for the
order already despatched
On 11 March 2019

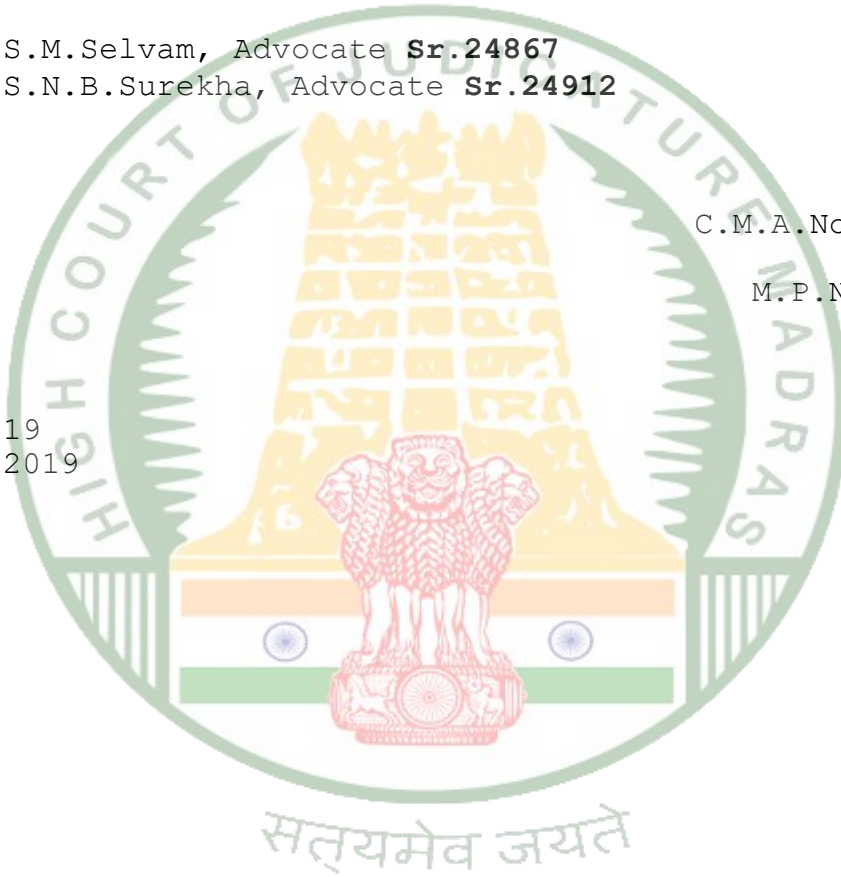
Copy to

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

+1cc to M/S.M.Selvam, Advocate **Sr.24867**
+1cc to M/S.N.B.Surekha, Advocate **Sr.24912**

C.M.A.No.51 of 2015
and
M.P.No.1 of 2015

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