

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.09.2018

C O R A M

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1737 of 2007

K.Ganesan

...Appellant/Petitioner

Vs

The Oriental Insurance Co.Ltd.,
CBO IX, 28 Karpura Street,
Periamet, Chennai - 600 003.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2006 made in M.C.O.P.No.184 of 2003 on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Salem.

For Appellant : Mr.K.M.Ravi
For Respondent : Mr.M.Rajasekhar

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the claimant against the judgment and decree dated 31.10.2006 passed in M.C.O.P.No.184 of 2003 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Judge, Salem.

2.The brief facts of the claim petition is as follows;

(i) The claimant has filed M.C.O.P.No.184 of 2003 claiming compensation for the damage of the vehicle, which involved in the accident. It has been stated by the appellant that the car driven by one S.M.Jayapalan on 09.03.2001 has lost his control and hit against the tamarind tree and the said car bearing Registration No.TN-01-K-5312 was totally damaged. A criminal complaint was also been registered against the driver of the car. In the claim petition, the appellant has stated that the respondent did not take any action to settle the claim for the damages of the vehicle. The dealer of the car has given a quotation for a sum of Rs.5,80,835/- for repairing the car and hence the appellant/claimant has claimed a sum of Rs.7,00,000/- for the said damages.

3. The Tribunal on hearing both the petitioner as well respondent has given finding that the appellant/claimant has filed only an estimation of charge in Ex.A.6, but he has not proved that the damages were repaired by his own costs. The said damages got repaired as per the estimated charges in Ex.A.6, was not proved by the petitioner and therefore, the

Claim Petition was dismissed by the Tribunal.

4. Aggrieved against the same, this appeal has been preferred by the claimant.

5. Before this forum also, the appellant has raised the same fact but no additional evidence has been placed.

6. On the side of the respondent, by quoting a case law reported in Accident Claims Journal 2007 [Volume II] Page No.721=2007 ACJ 721 (National Insurance Co.Ltd., Vs. Laxmi Narain Dhut) argued that, where the claimant tried to claim own damages, it cannot be adjudicated before the Tribunal, but he has to approach the proper forum. The Apex Court, has held in Paragraph 22 as under:-

"Where the claim relates to own damage claims, it cannot be adjudicated by the insurance company (sic Tribunal). But it has to be decided by an other forum, i.e., forum created under Consumer Protection Act, 1986 (in short 'the CP Act'). Before the Tribunal, there were essentially three parties, i.e., the insurer, insured and the claimants. On the contrary, before the Consumer Forums there were two parties, i.e., owner of the vehicle and the insurer. The claimant does not come into the picture. Therefore, these are cases where there is no third party involved."

6. In view of the finding of the Tribunal and also the observations made by the Hon'ble Supreme Court (cited supra), the remedy is available to the appellant to approach the proper forum. Hence, this Court is not inclined to entertain the appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. The appellant is directed to prefer necessary application before the appropriate forum. However, in computing the limitation period, the time during which the appellant was prosecuting the matter before the similar forum would have to be excluded.

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

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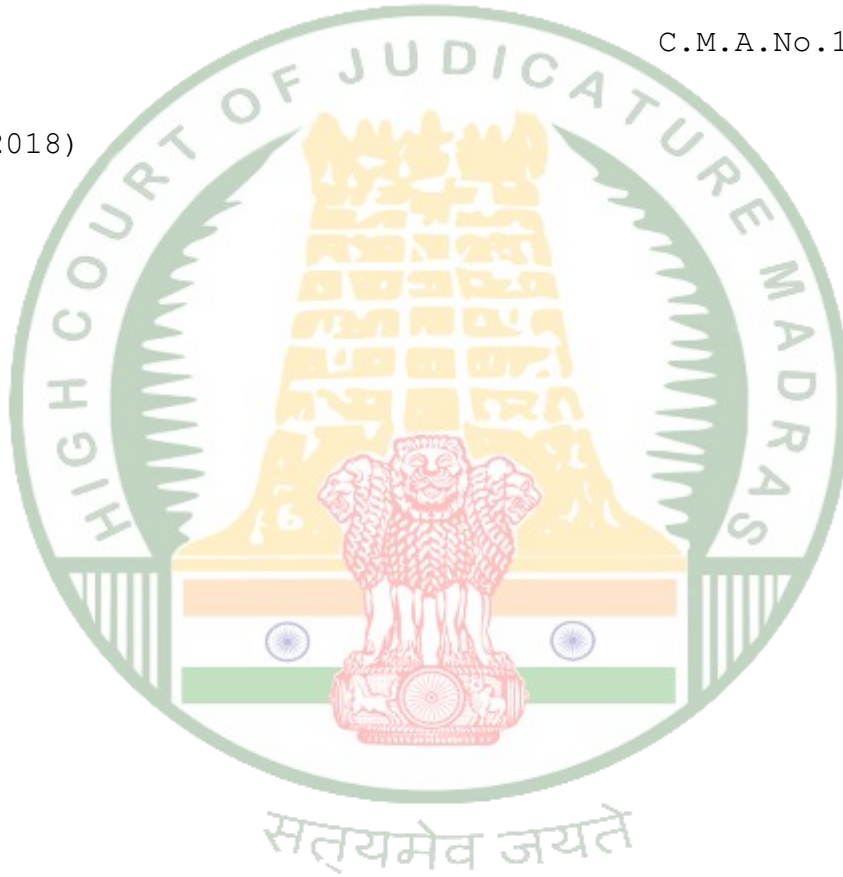
1.The Motor Accidents Claims Tribunal,
Additional Subordinate Judge,
Salem.

2. The Section Officer,
V.R.Section, High Court, Madras

+1 CC to Mr.M.Rajasekhar, Advocate sr 65315

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GP(CO)
SP(18/12/2018)



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