

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.12.2017
PRONOUNCED ON :09.04.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2255 of 2007

Sigamani ... Appellant

Versus

1.P.Chandran

2.Oriental Insurance Co. Ltd.,
11, EVN Road, Parimalam Complex,
II Floor, Erode - 638 011. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree passed in M.C.O.P.No.28 of 2003 dated 19.07.2006 on the file of the Motor Accident Claims Tribunal, Salem Additional District Judge - cum-Fast Track Court No.2, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondent 2 : Mr.S.Mohan
for Mr.S.K.Krishnamoorthy
R1 exparte before the Tribunal

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award and decree passed in M.C.O.P.No.28 of 2003 dated 19.07.2006 on the file of the Motor Accident Claims Tribunal, Additional District Judge-cum-Fast Track Court No.2, Salem.

2. The brief facts of the case are that on 07.10.2002 at about 06.30 hrs, the claimant/appellant herein was walking along the road near a workshop at Kondalaampatti Bypass, to get water for his house. At that time, the first respondent's van bearing Regn. No.TN20-D-1177, coming in the same side, driven by its driver in a rash and negligent manner, hit the claimant, due to which the claimant/appellant herein sustained serious injuries. The Claimant was 50 years old, at the time of accident and he was working as a watchman in the workshop and earning Rs.2,000/- per month.

3. The appellant/injured person claimed the compensation for a sum of Rs.5,00,000/- for the injury sustained by him in the accident. The Tribunal, on a consideration of the materials available on record, awarded a sum of Rs.85,000/- with interest at 7.5% per annum to the claimant in MCOP.No.28 of 2003 under the following heads:-

For Permanent disability	Rs.	70,000/-
For Transportation charges, Nutritious Food and Medical expenses	Rs.	5,000/-
For pain and sufferings	Rs.	10,000/-

	Rs.	85,000/-

4. Aggrieved over the same, the appellant herein/claimant, has filed the present appeal.

5. Point for consideration is as to whether the Insurance Company is liable to pay the compensation as awarded by the Tribunal.

6. The learned counsel for the appellant herein mainly contended that it is the liability of the Insurance Company to pay the third parties and it may recover from the person who was primarily liable to pay. The Tribunal also failed to see the object of the Motor Vehicles Act that which is a beneficial legislation in nature and when the claim is proved, the liability is on the Insurance Company, the Insurance Company could be directed to pay and recover, at the first instance. Hence the Tribunal has not considered the social welfare legislation to extend the relief by way of compensation to the victim and therefore, the decree obtained by the relatives of the victim is only a paper decree unless if the owner of the vehicle is a man of straw.

7. On a perusal of the records, documents available on record, it is learnt that the date of accident is 07.10.2002 and the vehicle, which caused accident is a van bearing regn. No.TN20 D 1177, hit the claimant and caused injury. Subsequently, FIR and Charge Sheet also filed, by recording the occurrence and the driver of the vehicle also admitted the evident and sentence was also ordered by the Criminal Court. The driver of the vehicle, admitted the offence and paid the fine, which has been proved by Ex-P5 and the negligence is fixed on the driver of the van and liability is fixed on the insurance company.

8. The first respondent/owner of the vehicle issued a cheque dated 29.04.2002 for the payment of policy. When the Insurance Company placed the cheque for collection, the cheque was dishonoured, on the ground that there was no amount in the account of the first respondent. Since the cheque was dishonoured, the Insurance Company cancelled the policy and also issued notice to the first respondent.

9. The copy of the policy was marked as Ex.B1, the cheque issued by the first respondent/owner of the vehicle was marked as Ex.B2, the returned memo of the cheque was marked as Ex.B3, the notice regarding the cancellation of the policy raised by the second respondent/Insurance Company was marked as Ex.B4 and the acknowledgement card for the notice was marked as Ex.B5. It is clear that the cancellation of the policy was five months prior to the date of accident i.e., the date of accident is 07.10.2002 and the cheque issued by the first respondent/owner of the vehicle was 29.04.2002 and the policy was cancelled on 02.05.2002.

10. Hence, on a perusal of the above records, it is learnt that there is no valid policy on the date of accident was confirmed. By considering the above facts and evidence placed before the Tribunal, which is very well observed that there is no policy for the vehicle involved in the accident. Since there was no policy on the date of accident, no liability can be fixed on the Insurance Company. Hence, with the negligence of the first respondent's driver is fixed by the Tribunal, the amount of compensation arrayed on various heads as a sum of Rs.85,000/- along with interest is liable to be paid only by the first respondent/owner of the vehicle.

11. Based on the above findings, the Civil Miscellaneous Appeal is disposed of. No costs. The first respondent/owner of the vehicle is directed to deposit the entire amount of compensation along with interest @ 7.5% from the date of petition till the date of deposit to the credit of MCOP. No.28 of 2003 within a period of four weeks from the date of receipt of copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant/appellant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CCC)

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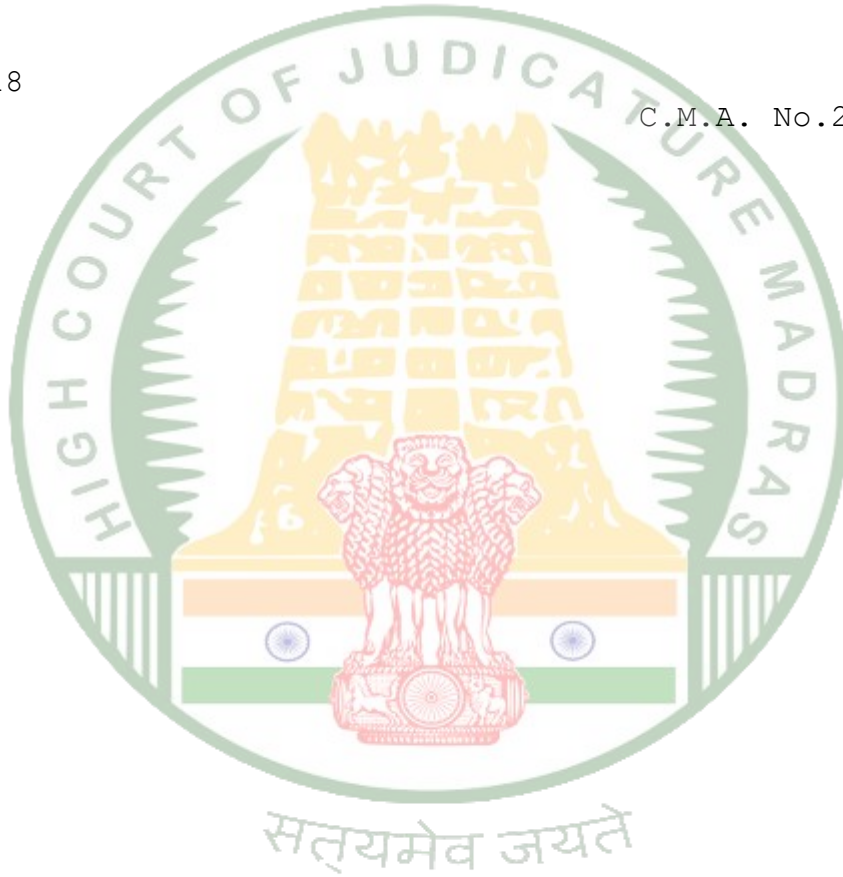
Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Salem Additional District Judge-cum-Fast Track Court No.2,
Salem
2. The Section Officer,
V.R. Section,
High Court,
Madras - 104.

RJI (CO)
sm:1.6.2018

C.M.A. No.2255 of 2007



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