

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2789 & 2804 of 2018
and
C.M.P.Nos. 21259 & 21387 & of 2018

Branch Manager,
M/s.Reliance General Insurance Co. Ltd.,
Shri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Salem.

... Appellant in both C.M.As/
2nd Respondent in Both MCOPs

Vs.

Manohar ... 1st Respondent in C.M.A.No.2789 of 2018
/Petitioner

Annadurai ... 1st Respondent in C.M.A.No.2804 of 2018/
Petitioner

Ramalingam ... 2nd Respondent in both C.M.As/1st Respondent
in both MCOP

Common Prayer : Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 28.03.2018 made in M.C.O.P.No.1139 and 1141 of
2012, on the file of Motor Accidents Claims Tribunal, I
Additional District Court, Cuddalore.

For Appellant : Mr.S.Arun Kumar

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J U D G M E N T

These Civil Miscellaneous Appeals are filed against the
common judgment and decree dated 28.03.2018 made in
M.C.O.P.Nos.1139 and 1141 of 2012 on the file of Motor Accidents
Claims Tribunal, I Additional District Court, Cuddalore.

2. Both the appeals arise out of same accident and common

award and hence, they are disposed by this common judgment. The parties are referred to as per the rank in the claim petitions for the sake of convenience.

3. The appellant is second respondent in M.C.O.P.Nos.1139 and 1141 of 2012 on the file of Motor Accidents Claims Tribunal, I Additional District Court, Cuddalore. The claimants filed the above claim petitions claiming a sum of Rs.5,00,000/- and Rs.15,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 10.06.2011.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.1,10,000/- and Rs.3,56,530/- respectively as compensation to the claimants.

5. Challenging the award dated 28.03.2018 made in M.C.O.P.Nos.1139 and 1141 of 2012 fastening the entire negligence on the driver of the lorry belonging to the first respondent, the second respondent/Insurance Company has come out with the present appeal.

6. According to the learned counsel for the second respondent, the accident occurred only due to rash and negligent driving by the driver of the car in which the injured claimants traveled. The F.I.R. was registered only against the driver of the car. Except interested witnesses, no other independent witness was examined to prove that the accident occurred only due to rash and negligent driving by the driver of the lorry. The claim petition ought to have been dismissed for non-joinder of owner of the car as well as insurer of the car. By very nature of the accident, the negligence could be interfered.

7. Heard the learned counsel appearing for the second respondent/insurance company and perused all the materials available on record.

8. From the materials on record, it is seen that claimants have examined themselves and deposed that accident occurred only due to rash and negligent driving by the driver of the lorry. The F.I.R. was lodged against the driver of the car by the driver of the lorry. According to the claimants, the driver of the lorry lodged the complaint and registered the F.I.R. taking advantage that both the claimants and other occupants of the car were injured and admitted in the hospital. R.W.1, the Assistant Manager of the second respondent/Insurance Company has admitted in cross examination that all the occupants of the car were taken by ambulance to the hospital. The second

respondent/Insurance Company has not examined the driver of the lorry to substantiate their claim that accident occurred only due to rash and negligent driving by the driver of the car. The first respondent remained exparte before the Tribunal. The second respondent/insurance company has not taken any steps to examine the owner or driver of the lorry and there is no contra evidence to the evidence of the claimants that accident occurred only due to the rash and negligent driving by the driver of the lorry. The Tribunal has appreciated the above facts in proper perspective and held that accident occurred only due to rash and negligent driving by the driver of the lorry. Tthere is no error in the said finding warranting interference by this Court.

9. Accordingly, the award passed by the Tribunal is hereby confirmed and both the Civil Miscellaneous Appeals are dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw their respective award amount, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

The I Additional District Judge,
Motor Accidents Claims Tribunal,
Cuddalore.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

C.M.A.Nos.2789 & 2804 of 2018 and
C.M.P.Nos.2
1387 & 21259 of 2018

PA (CO)
GN(25/04/2019)