

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2939 of 2018
and C.M.P.No.22233 of 2018

The National Insurance Co. Ltd.,
Trichy . .. Appellant

Vs.

1.K.Prasad ... Petitioner/Respondent
2.P.Ravikumar ... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 20.09.2004 made in M.C.O.P.No.34 of 2004 on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

For Appellant : Mr.S.Arunkumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant-Insurance Company, challenging the liability fastened on them by the award dated 20.09.2004, made in M.C.O.P.No.34 of 2004 on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore.

2.The appellant is the 2nd respondent in M.C.O.P.No.34 of 2004 on the file of the I Additional Sub Court, (Motor Accident Claims Tribunal), Coimbatore. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.4,00,000/- as compensation for the injuries suffered by him in the accident that took place on 13.08.2002.

3.The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent riding by 2nd respondent, rider of the motor cycle and awarded a sum of Rs.55,105/- as compensation to the 1st respondent and directed the appellant-Insurance Company as well as the 2nd respondent to pay the compensation jointly and severally.

4.Agrieved by the said award passed by the Tribunal

dated 20.09.2004, made in M.C.O.P.No.34 of 2004,

fastening the liability on them, the appellant-Insurance Company has filed the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal ought not to have held that the appellant is liable to pay the compensation, when the 1st respondent/claimant has not proved the liability of the appellant. The Tribunal failed to note that the 1st respondent/claimant being the owner of the vehicle, cannot claim against the appellant for the injuries sustained by him and the liability of the Insurance Company is only to indemnify the 1st respondent herein. Therefore, he prayed for allowing the appeal and setting aside the award passed by the Tribunal.

6.I have heard the learned counsel appearing for the appellant and perused all the materials available on record.

7.From the materials available on record it is seen that the claimant/1st respondent has deposed as P.W.1 the manner in which the accident occurred. Ex.P1, FIR has been registered against the 2nd respondent, rider of the motor cycle. The counsel for the appellant's contention before the Tribunal that the 2nd respondent was under the influence of alcohol while riding the vehicle, was not proved by any evidence. From the Motor Vehicle Inspector's report, marked as Ex.P3, it is seen that the rider of the motor cycle is the 2nd respondent and 1st respondent is the owner of the said vehicle. Also since the 2nd respondent has accepted his negligence and paid fine, it is proved that the accident had occurred due to the rash and negligent driving of the motor cycle by the 2nd respondent. On the basis of the evidence of P.W.1 and Ex.P7 and considering the police investigation records, the Tribunal held that the accident occurred due to the rash and negligent driving by the 2nd respondent, who is the rider of the motor cycle. In view of the fact that the policy issued is in force, the Tribunal directed the appellant to pay the compensation. I do not find any error in the reasoning of the Tribunal, warranting interference by this Court.

8.Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The Appellant-Insurance Company as well as the 2nd respondent are 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 1st respondent/claimant is permitted to withdraw the award

amount with interest and costs, after adjusting the amount already withdrawn, if any, by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

gsa

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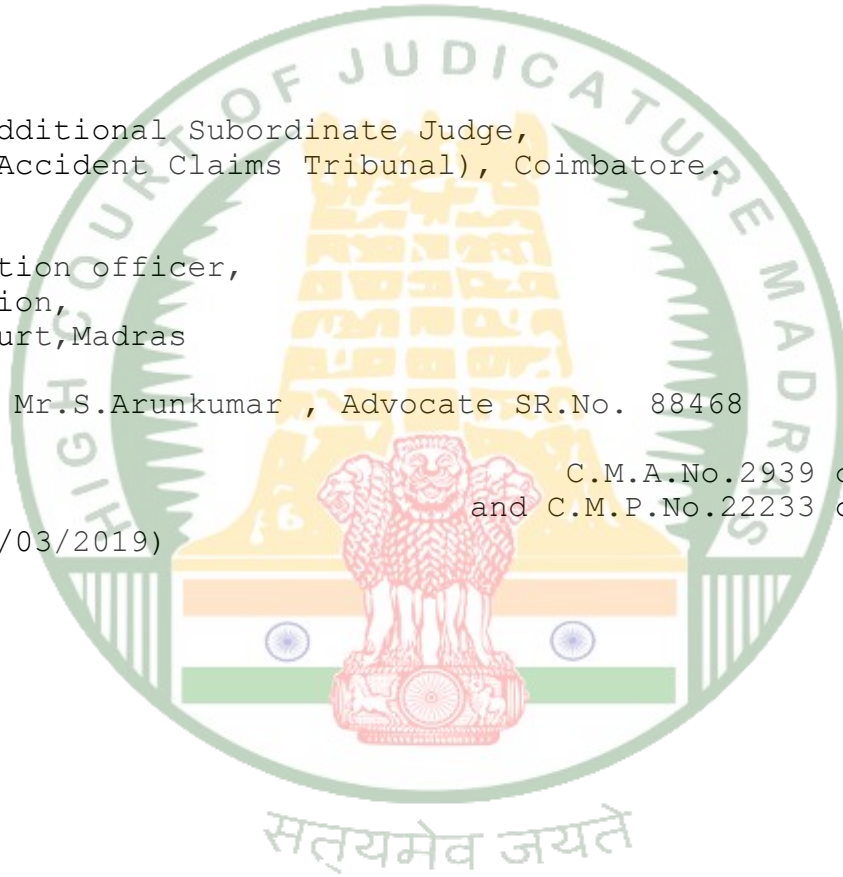
The I Additional Subordinate Judge,
(Motor Accident Claims Tribunal), Coimbatore.

Copy to
The section officer,
VR Section,
High court, Madras

+1cc to Mr.S.Arunkumar , Advocate SR.No. 88468

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A.SK(13/03/2019)



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