



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.928 of 2017

Veerusamy @ Veeruthevar

... Appellant / Claimant

Vs.

1. Arunachalam (died)

2. United India Insurance Company Limited,
Represented by its Branch Manager,
No.130, B.K.B.V.Complex,
Panthalkudi, Aruppukottai.

3.Eswari

4.Ajith

5.Aarthy

... Respondents / Respondents

(R3 to R5 are brought on record as LRS of the deceased R1, vide Court order dated 08.03.2017 made in M.P.(MD)No.2 to 4 of 2015 in C.M.A. (MD)No.SR2369 of 2015)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to modify the judgment and decree dated 11.10.2011 passed in M.C.O.P.No.47 of 2010 on the file of the Motor Accidents Claims Tribunal / Sub Court, Aruppukkottai and direct the second respondent herein to pay the award amount.

For Appellant : Mr.Pon Senthil Kumaran

For R2 : Mr.B.Rajesh Saravanan

For R3 to R5 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to modify the judgment and decree dated 11.10.2011, passed in M.C.O.P.No.47 of 2010 on the file of the Motor Accidents Claims Tribunal / Sub Court, Aruppukkottai and direct the second respondent herein to pay the award amount.

<https://hcservices.ecourts.gov.in/hcservices> 2. The appellant is the claimant in M.C.O.P.No.47 of 2010, on the file of the Motor Accident Claims Tribunal / Sub Court, Aruppukkottai, claiming a sum of Rs.13,00,000/- (Rupees Thirteen



Lakhs Only) as compensation for the death of his son in the accident that occurred on 22.03.2010. By the award, dated 11.10.2011, the Tribunal awarded a sum of Rs.7,55,000/- (Rupees Seven Lakhs and Fifty Five Thousand only) as compensation.

3. According to the appellant, on 22.03.2010 at about 9.15 p.m., when the deceased and his friend, namely, Arunachalam / first respondent herein came in a bike, belonging to the first respondent, due to rash and negligent driving by the first respondent, the accident occurred. Due to the same, the deceased sustained multiple injuries. The deceased was taken to the Government hospital, Virudhunagar. Despite treatment given, he succumbed to injuries. The vehicle of the first respondent was insured with the second respondent. Therefore, the appellant has filed claim petition, claiming a sum of Rs.13,00,000/- (Rupees Thirteen Lakhs Only) before the Motor Accidents Claims Tribunal / Sub Court, Aruppukkottai.

4. The first respondent herein remained *ex-parte* before the Tribunal.

5. The appellant filed statement of objections and contended that the accident occurred only due to rash and negligent driving by the first respondent and the first respondent did not have valid driving licence to drive the vehicle. Therefore, the second respondent is not liable to pay any compensation, in view of the violation of policy condition.

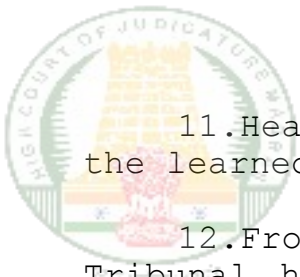
6. Before the Tribunal, on behalf of the appellant, the appellant examined himself as P.W.1, one Mani @ Anandhan was examined as P.W.2 and marked three documents as Exs.P1 to P3. The second respondent examined three witnesses, namely, Selvaraj, Ganesh Babu and Kannan as R.Ws.1 to 3 and marked three documents as Exs.R.1 to R3.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the first respondent and awarded a sum of Rs.7,55,000/- (Rupees Seven Lakh Fifty Five Thousand Only) as compensation to the appellant.

8. Against the said award, the present Civil Miscellaneous Appeal has been filed before this Court.

9. The learned counsel appearing for the appellant contended that since the vehicle involved in the accident was insured with the second respondent, the second respondent is liable to pay the compensation and recover the same from the first respondent.

10. Though notice was served on the respondents 3 to 5 and their names are printed in the cause list, there is no representation either in-person or through counsel.



11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

12. From the materials available on record, it is seen that the Tribunal held that the accident took place only due to rash and negligent driving by the first respondent and that he did not have valid driving licence at the time of the accident. The second respondent has not disputed the contention of the appellant that the accident took place only due to rash and negligent driving by the first respondent. Considering the documents and the judgment relied on by the appellant, the Tribunal rightly come to the conclusion that the first respondent is liable to pay compensation of Rs.7,55,000/- to the appellant. There is no error in the said finding. The Tribunal exonerated the second respondent as the first respondent did not possess any driving licence. The Tribunal directed the first respondent to pay compensation. This portion of award is erroneous. It is well settled law that the claimant should not suffer even after obtaining an order for compensation. The provisions relating to the award of compensation are benevolent provisions in favour of the claimant. The Hon'ble Apex Court in various Judgments have formulated the principle of "pay and recovery".

13. In the result, this Civil Miscellaneous Appeal is partly allowed, directing the second respondent to pay compensation awarded by the Tribunal at the first instance and recover the same from the respondents 3 to 5. The second respondent / Insurance Company shall deposit the award amount to the credit of M.C.O.P.No.47 of 2010, on the file of the Motor Accidents Claims Tribunal / Sub Court, Aruppukkottai, within a period of eight weeks from the date of receipt of a copy of this order and in the later stage, the second respondent / Insurance Company is entitled to recover the same from the respondents 3 to 5 by way of Execution Petition, without actually filing a suit as held by the Hon'ble Apex Court in the judgment reported in **2004(2)CTC 464 (Oriental Insurance Co., Ltd., vs. Shri Nanjappan and others)**. On such deposit, the claimant is at liberty to withdraw the entire award amount along with accrued interest and costs, after filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Motor Accidents Claims Tribunal /
Sub Court, Aruppukkottai.



2. The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Pon Senthil Kumaran, Advocate Sr.No.82128
+1cc to Mr.B.Rajesh Saravanan, Advocate Sr.No.82261

MYR

VB/SKN/SAR4/19.12.2018/4P/6C

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