

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal No.3177 of 2005

The Oriental Insurance Co. Ltd.,
Branch office,
90A Thurayur Road,
Namakkal Town & District

... Appellant/2nd Respondent

...Vs...

1. Subramani ... 1st Respondent/Petitioner
2. S.M.Natarajan ... 2nd Respondents /1st Respondent

(2nd respondent set exparte in Lower Court)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 30.12.2002 made in MACTOP No.1085 of 2002 on the file of the Motor Accident Claims Tribunal, Principal District Court, Namakkal.

For Appellant : Mr. N.Vijayaraghavan

J U D G M E N T

In respect of the injuries sustained by the first respondent herein, in a motor vehicle accident involving Tempo Van bearing Registration No.TN51-5040 owned by the second respondent herein and insured with the appellant herein, due to the rash and negligent driving of the Tempo Van, by its driver, on 01.10.1999, at about 10.00 pm, on Namakkal to Sendamangalam Road, near Burial ground at Namakkal Town, a claim petition in MCOP No.619 of 2000 was filed claiming a sum of Rs.2,00,000/- by the claimant. The said MCOP was subsequently re-numbered as MCOP No.1085 of 2002.

2. The learned counsel for the appellant herein / Insurance Company submitted that the lower court erred in not granting the right of recovery from the owner of the vehicle by way of direction / decree in the award itself, having relied upon 2001 ACJ 843 (SC).

3. The Tribunal has analysed the decisions relied on by both sides and ultimately rendered a finding that since the

Tempo van bearing Registration No.TN51-5040 was insured with the appellant herein, the Insurance Company is liable to pay compensation to the claimant, but has stated anything about pay and recovery.

5. A detailed analysis of the records which are made available before this Court show that on 30.12.2002, a common award was passed in MCOP Nos.1084, 1085, 1086 and 1087 of 2002. In that, as against the award passed in MCOP No.1087 of 2002, CMA No.3862 of 2004 had been taken on file and the said Appeal was disposed of, on 31.12.2003 modifying the award of the Tribunal by giving liberty to the Insurance Company to recover the amount from the owner of the vehicle.

6. This Court is of the view that, in a similar matter, when the relief of pay and recovery is ordered, the same benefit has to be given to the appellant herein also. Hence, in view of the judgment dated 31.12.2003 passed in CMA No.3862 of 2004, the award of the Tribunal which is challenged herein, is modified to the following extent:

The Insurance Company is liable to pay the compensation to the claimants and they are entitled to recover the amount from the owner of the vehicle by filing Execution Petition in the same O.P.

7. With the above modification, the Appeal is disposed of. It is made clear that the award passed by the Claims Tribunal for Rs.1,29,110/- along with interests and costs stands unaltered, since no ground/contention is raised with regard to quantum by the learned counsel for the appellant. No costs. Consequently, the connected CMP is closed.

8. The appellant / Insurance Company is directed to deposit the compensation amount, as awarded by the Tribunal, along with interests and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. As it is stated that R-1 died, on such deposit being made, the Tribunal shall transfer the amount to the Savings Bank Account of the L.Rs. of the injured / claimant / first respondent herein, forthwith, through RTGS. The Insurance Company is at liberty to recover the amount from the owner of the vehicle.

Sd/-

Assistant Registrar (AR Comp)

//True Copy//

Sub Assistant Registrar

srk

To

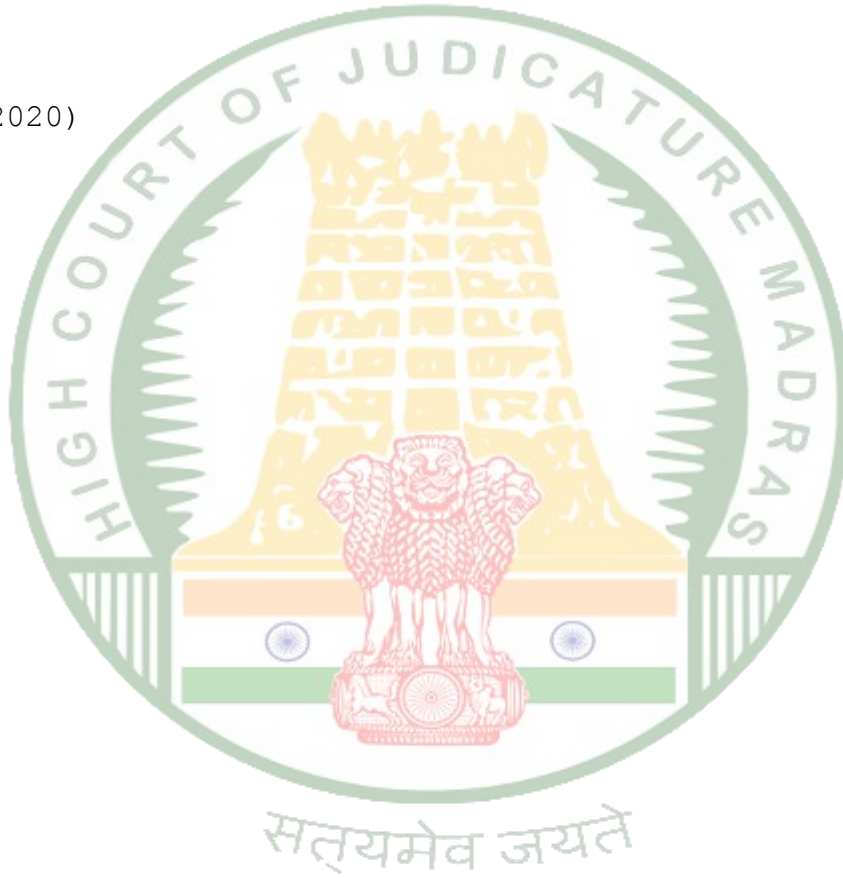
1. Motor Accident Claims Tribunal,
Principal District Court, Namakkal.

Copy To

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

C.M.A.No.3177 of 2005
& CMP No.9893 of 2005

GJ(CO)
GN(06/02/2020)



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