

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

C.M.A.No.3326 of 2006

and

C.M.P.No.1 of 2006

United India Insurance Co. Ltd.,
Divisional Office,
Ranipet.

... Appellant/3rd Respondent

Vs.

1.Minor Manigandan,
Represented by his Guardian
and next friend by his mother
Suruliammal ...1st Respondent/Petitioner

2.The Managing Director,
Tamil Nadu Transport Corporation,
Thiruvalluvar Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai.

3.T.V.R.Pathi ...2 & 3 Respondents/1st & 2nd Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 01.12.2005 in M.C.O.P.No.178 of 2001 on the file of the Motor Accident Claims Tribunal (Sub Judge), Arni.

For Appellant : Mr.S.Arun Kumar

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, assailing the award dated 01.12.2005, passed by the 'Motor Accident Claims Tribunal (Sub Judge), Arni' (hereinafter referred to as 'the Tribunal'), in M.C.O.P.No.178 of 2001.

2.The brief facts of the case are that on 13.04.1999 about 12.30pm, the first respondent/claimant was travelling in a Car bearing Registration No.TN-01-B-7506, owned by the 3rd respondent and insured with the appellant Insurance Company, from Tindivanam to Madras. At that time, a bus bearing Registration No.TN-01-N-6222, belonging to the 2nd respondent Transport Corporation, came from the opposite direction in a rash and negligent manner and dashed against the Car. Due to the said impact, the first respondent/claimant sustained grievous injuries. He filed a claim petition claiming a total compensation of Rs.2,50,000/-.

3.The Tribunal, on analysis of the entire oral and documentary evidence available on record, held that the accident had occurred due to the rash and negligent act on the part of the drivers of both the Car and bus and accordingly, fastened the liability on the insurer of the Car and the Transport Corporation at 50% each. After holding so, the Tribunal awarded a sum of Rs.5,000/- for injuries, Rs.35,000/- for disability, Rs.3,000/- towards pain and suffering, Rs.2,000/- for extra-nourishment, Rs.300 towards X-ray, Rs.1,000/- towards transportation charges, Rs.15,000/- for future medical expenses, totalling a sum of Rs.61,300/- with interest @ 9% p.a. from the date of claim petition. Challenging the 50% liability fixed on the appellant/insurer of the Car, the present appeal has been filed.

4.The learned counsel for the appellant, placing reliance on Ex.P1-FIR and the evidence of P.W1, the Tribunal has erred in fixing the negligence on the drivers of both the vehicles, inasmuch as the accident had occurred only due to the negligent act on the part of the driver of the bus. Hence, the learned counsel prayed to set aside the finding of the Tribunal fixing 50% liability on the appellant insurance company.

5.Heard the learned counsel for the appellant Insurance Company and perused the materials available on record.

6.Though notice was ordered way back in the year 2006, the appellant has not taken proper steps to serve papers on the first respondent/claimant, till date. Despite service of notice and the name of the 2nd respondent Transport Corporation having been printed in the cause list, there is no representation on their behalf. However, considering the fact that the appeal is of the year 2006, this Court is inclined to proceed with the appeal on merits.

7.The 1st respondent/claimant as P.W.1 stated in his evidence that on 13.04.1999, when he was travelling along with his family members in the Car bearing Registration No.TN-01-B-

7506, from Tindivanam to Madras, the bus bearing Registration No.TN-01-N-6222, belonging to the 2nd respondent Transport Corporation, came from the opposite direction in a rash and negligent manner and dashed against the Car, as a result of which, the occupants of the Car sustained injuries. The said evidence was supported by Ex.P1 First Information Report.

8.Contrary to the same, R.W.1/driver of the bus deposed that he drove the bus very slowly and carefully; at the place of accident, a lorry stood halted due to breakdown with its tyres being changed; when the driver of the Car suddenly turned the vehicle to the right side, the right side of the car and the left side of the bus crashed into each other; and hence, the driver of the Car was responsible for the accident.

9.The Tribunal based on the oral and documentary evidence adduced by the parties, has opined that no eye witness was examined with regard to the manner of accident; and no criminal court judgement was produced finding fault with the driver of the bus alone, though Ex.P1 FIR was registered against him. After observing so, the Tribunal has rightly arrived at the conclusion that the accident had occurred due to the rash and negligent act on the part of the drivers of both the vehicles and accordingly, fastened the liability on the insurer of the Car and the Transport Corporation at 50% each, which finding this Court is not inclined to interfere.

10.There is no dispute with regard to the quantum of compensation and the rate of interest awarded by the Tribunal and hence, the same are hereby confirmed.

11.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant Insurance Company is directed to deposit 50% of the award amount with interest and costs, as ordered by the Tribunal, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. It is reported that the first respondent/claimant should have attained majority as of now and hence, the Tribunal shall transfer the amount lying in the deposit to the Savings Bank account of the 1st respondent/claimant, through RTGS, on filing proper application.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

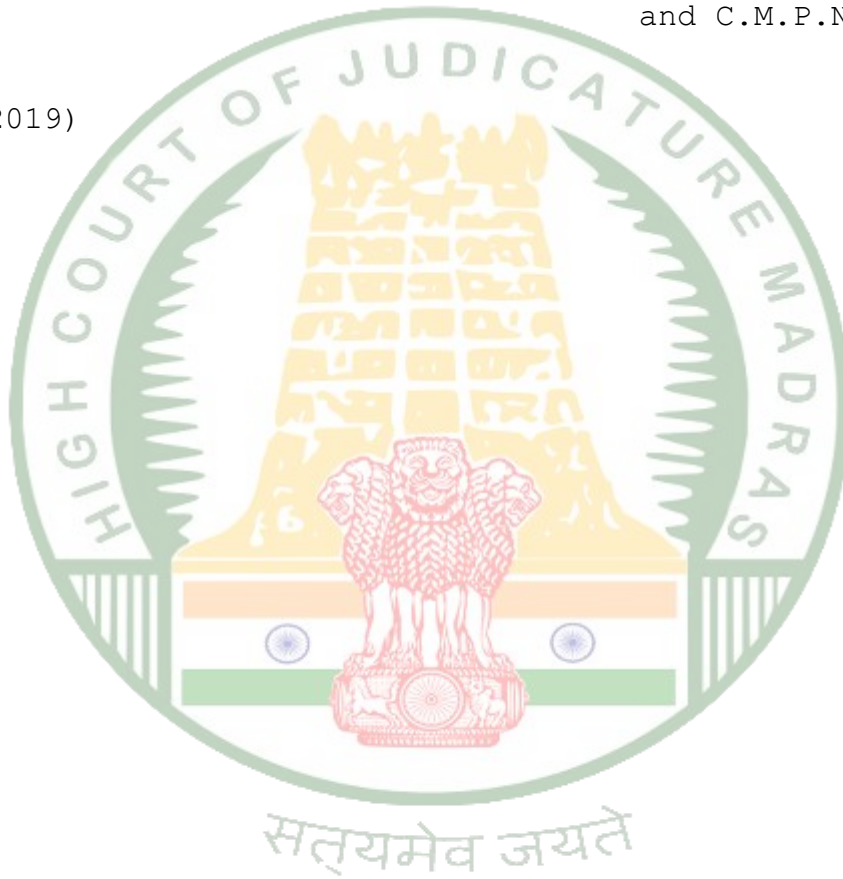
To

1.The Motor Accident Claims Tribunal
(Sub Judge), Arni.

2.The Section Officer,
VR Section, High Court of Madras.

C.M.A.No.3326 of 2006
and C.M.P.No.1 of 2006

CP(CO)
SP(23/10/2019)



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