

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1090 of 2011

Kandasamy

...Appellant/petitioner

Vs.

1.Kanagarasu

2.Ramasamy

3.New India Assurance Co. Ltd.,
32, East coast chambers,
1st floor, GN Chetty road,
T.Nagar, Chennai.
Through the Divisional Office,
Premier complex, Five roads, Salem 16.
Ramakrishna Road,
Salem 7.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 22.07.2010 in M.C.O.P.No. 199 of 2007, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem.

For Appellant : Mr.K.Kuppusamy

For Respondents : Mrs.C.Sangamithirai
for R3
R1 & R2 - exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 199 of 2007 , on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem. He has filed the above claim petition under Sections 163 (A) and 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 22.06.2006.

2. The brief case of the appellant/claimant is as follows:

On 22.06.2006, at about 10.00 hours, when the appellant/claimant was travelling in the first respondent's mini auto bearing Registration No. TN 28 J 8506 from Morepalayam Sandhai on the Vaiyappamalai to Paruthipalli main road. From the very beginning, the driver of the auto drove the auto in a rash and negligent manner without minding the traffic rules and regulations. When the auto went at near somanmpatty Thirumanimutharu river bridge, the driver of the auto lost his control and capsized the auto. Due to the sudden impact, the appellant/claimant sustained grievous injuries on the left leg and all over the body. Immediately, the appellant/claimant was brought to Government Hospital Salem and admitted as inpatient. There he was taking treatment from 22.06.2006 to 26.07.2006 and still taking treatment as outpatient. There operation was conducted. Due to the accident, the appellant/claimant could not walk as before the accident. Due to the accident he was mentally affected. The above accident has caused him permanent disabilities and the life of the appellant/claimant is very adversely affected. The appellant/claimant could not do anything without the help of the others. The appellant/claimant requires prolonged treatment as inpatient and outpatient. The doctors have totally ruled out possibilities of the appellant/claimant returning to the original health. The accident happened only due to the rash and negligent driving of the driver of the mini auto. If the driver took little care, the accident could be avoided easily. The registration of the vehicle stands in the name of the first respondent herein. The Insurance Policy stands in the name of the second respondent. The third respondent is the insurer of the vehicle. Hence all the respondents are liable to pay compensation to the appellant/claimant.

3. The first and the second respondents remained absent before the Tribunal and therefore, they were set ex-parte. The New India Assurance Company Limited contested the claim petition. The learned Tribunal, after analysing the evidence on record, awarded compensation of Rs.79,900/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard both sides and perused the materials available on record.

5. The Tribunal after taking into consideration, the evidence of Kandasamy (pw1), FIR (ex.pl), the evidence of Sivalingam (rw1) and the copy of the policy of the mini auto

(ex.r1), has come to the conclusion that the injured has travelled in the said mini auto as a gratuitous passenger. Kandasamy (pw1), the injured has himself stated in the FIR (ex.p1) that, on the date of the accident, he loaded the bulls for weekly sandhai at Morepalayam and after unloading the bulls, he was returning in to his home on the said mini auto. In view of the above evidence, the Tribunal concluded that the appellant/claimant travelled in the said mini auto only as gratuitous passenger. The finding rendered by the Tribunal that the appellant/claimant travelled in the said mini auto as gratuitous passenger and it violates the policy condition of the Insurance Company is correct. The decision of the Tribunal that the Insurance Company is not liable to pay compensation to the appellant/claimant is well founded and well merited and the same is hereby confirmed.

6. Quantum of compensation: The Tribunal has considered various aspects and awarded a just and reasonable compensation and therefore, the quantum of compensation awarded by the Tribunal is hereby confirmed.

7. In the result,

- (i) The Civil Miscellaneous Appeal is dismissed. No costs.
- (ii) The orders passed by the Tribunal is hereby confirmed.
- (iii) The first respondent herein is directed to deposit the entire compensation awarded by the Tribunal i.e., Rs.79,900/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 199 of 2007, dated 22.07.2010, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem within a period of twelve weeks from the date of receipt of a copy of this order.
- (iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

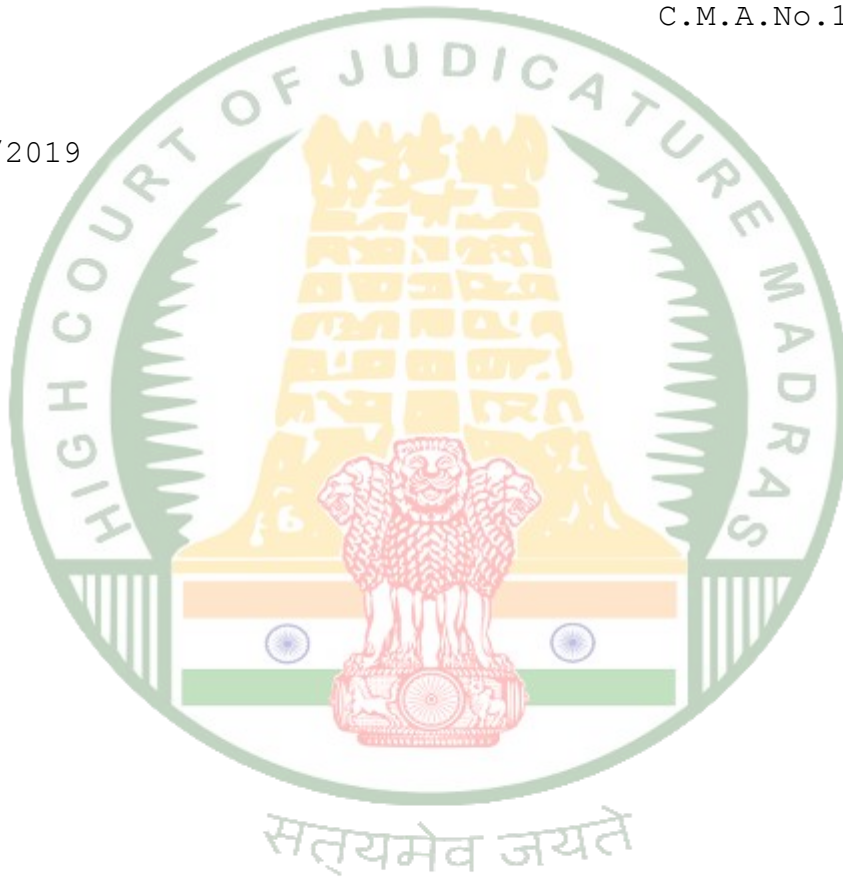
To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Salem.

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

C.M.A.No.1090 of 2011

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