

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.994 of 2007

and

M.P.No.1 of 2007

National Insurance Company Ltd.,
Represented by its Branch Manager,
Thiruthuraipoondi. ... Appellant/2nd Respondent

Vs.

1. Karthikeyan ...Respondent/Petitioner
2. Somu ... Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.04.2004 made in MACTOP.No.36 of 2003 on the file of Motor Accidents Claims Tribunal, Thiruvavur.

For Appellant : Mrs. N.B.Surekha

For Respondents : No appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.1,50,000/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief is as follows:

On the fateful day, i.e., on 13.01.2002, at about 6.00 pm, the first respondent/claimant was proceeding in the vehicle bearing Registration No.TN-51-6577 belonging to the second respondent and insured with the appellant insurance company in Vellur village. When he reached near Ramar temple, a dog suddenly crossed, due to which, he lost his balance and the vehicle hit against the dog. Due to the said impact, the first respondent/claimant sustained grievous injuries, for which, he filed a claim petition claiming a sum of Rs.2,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,50,000/- with interest at the rate of 9% per annum from

the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company submitted that the Tribunal has erred in holding that the insurance company is liable to pay compensation to the claimant, when the fact remained that the accident had taken place only due to the negligence on the part of the claimant.

4.Heard the learned counsel for the appellant and perused the materials available on record. Despite the service of notice, there is no representation on behalf of the respondents 1 and 2.

5.According to the learned counsel for the appellant insurance company, the accident had occurred only due to the negligence on the part of the claimant and hence, the insurance company is not liable to pay any compensation. On a perusal of the award, it is seen that the Tribunal has not discussed as regards the negligence aspect in a proper perspective. But, the fact remained that Ex.P1 First Information Report was registered against the injured/claimant for the offences under Sections 279 and 337 IPC. It is also seen that the claimant had given contradictory versions in the First Information Report and in the claim petition, about the ownership of the vehicle involved in the accident. When the FIR had been lodged against the claimant, the Tribunal ought to have given a finding in respect of the negligence aspect. But the Tribunal had failed to give any proper finding with regard to the same.

6.However, considering the fact that the insurance policy was in force at the time of accident and placing reliance on the decision of the Hon'ble Supreme Court in the case of Nishan Singh & Others Versus Oriental Insurance Company Ltd. [(2018) CDJ SC 469)], this Court is of the view that the claimant is entitled for compensation only under 'no fault liability'. Accordingly, this Court awards only a sum of Rs.50,000/- as compensation with interest at 7.5%pa from the date of claim petition. The award of the Tribunal is modified to that effect.

7.In fine, this appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

8.It is stated that the appellant insurance company has deposited the entire award amount as per the order of this Court dated 19.04.2007. In view of the same, the claimant is permitted to withdraw the aforesaid modified compensation amount, on

making proper application. The appellant insurance company is also permitted to withdraw the balance amount lying in the deposit, by making proper application.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

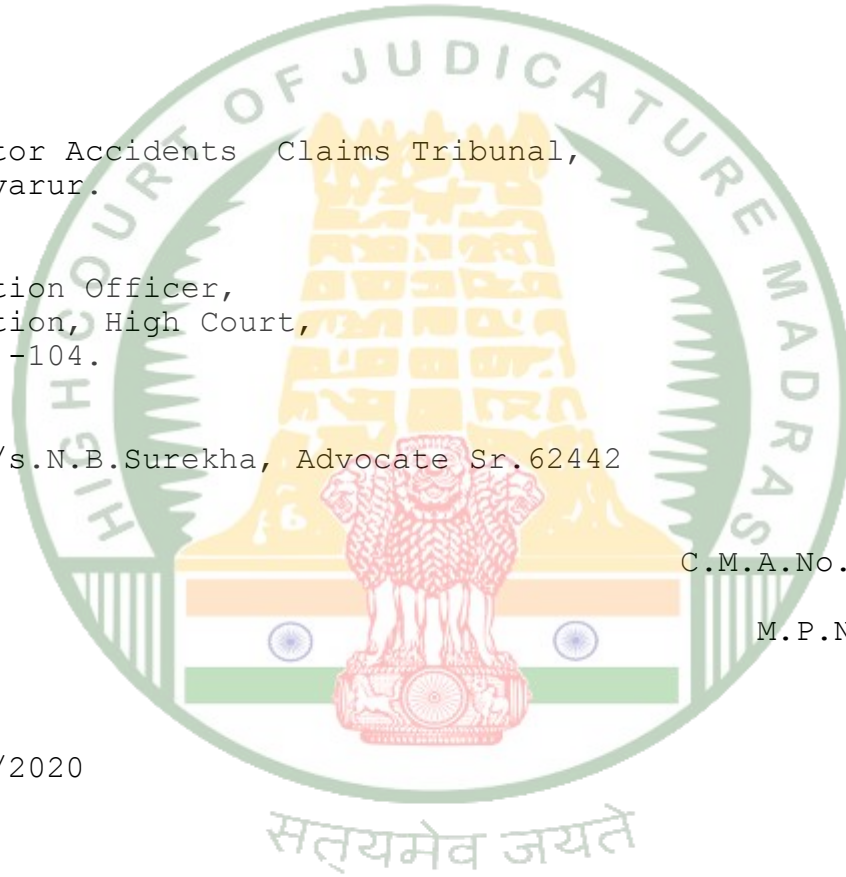
1. The Motor Accidents Claims Tribunal,
Thiruvarur.

2.The Section Officer,
VR Section, High Court,
Madras -104.

+1cc to M/s.N.B.Surekha, Advocate Sr.62442

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