

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2008 of 2010
and
MP.No.1 of 2010

The Oriental Insurance Co. Ltd.,
No.6-A, Lawsons road,
Ganesh Complex, II Floor,
Condonement, Trichy.Appellant

vs.

1.P.Subramanian

2.V.Ganesh ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 08.04.2008 passed in MCOP.No.10 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.3, Vriddhachalam.

For Appellant : Mrs.R.Sree Vidhya

For Respondents : No appearance

J U D G M E N T

The appellant / Oriental Insurance Company, the second respondent in MCOP.No.10 of 2007 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court No.3, Vriddhachalam has filed the present appeal. The first respondent / claimant filed the claim petition under Section 166 (1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident on 01.12.2004.

2. The case of the claimant in nutshell is as follows:

On 01.12.2004, the claimant was riding a TVS 50 motorcycle bearing Registration No.TN 31 T 7668 on Chennai - Trichy Main Road and about 09.15 am, a speeding lorry bearing Registration No.TAK 6262 hit him, as a result of which, the claimant fell down and sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the lorry belonging to the second respondent was the cause of the accident and that since the said vehicle was

insured with the present appellant, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the lorry remained absent before the Tribunal and therefore he was set *ex parte*. The Oriental Insurance Company contested the claim petition on all the grounds available to the insured. The learned Additional District Judge, Fast Track Court No.3 / Motor Accident Claims Tribunal, Vriddhachalam after analysing the evidence on record, awarded a compensation of Rs.40,000/- together with interest at the rate of 7.5% per annum to the claimant and directed the owner and the insurer of the lorry to pay the compensation jointly and severally. Aggrieved over the orders passed by the Tribunal, the Oriental Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mrs.R.Sree Vidhya, learned counsel appearing for the appellant. No appearance on behalf of the respondents.

5. In the appeal grounds, it is contended that since FIR was lodged after a delay of two days, the Tribunal was wrong in fixing negligence on the part of the driver of the lorry bearing Registration No. TAK 6262.

6. A perusal of the records shows that FIR was registered against the driver of the lorry bearing Registration No. TAK 6262 and the vehicle was also subjected to inspection by the Motor Vehicles Inspector, who had opined that the accident was not due to any mechanical failure of the vehicle. The respondents did not adduce any evidence to show that the lorry bearing Registration No. TAK 6262 was not involved in the accident. Merely because, there is a delay in registering the FIR, it cannot be concluded that the lorry belonging to the second respondent was not involved in the accident, especially, when the accident was not disputed by the owner of the offending vehicle. In fact, the owner of the lorry did not appear before the Tribunal and was set *ex parte*. In the facts and circumstances of the present case, I do find any reason to interfere with the findings recorded by the Tribunal. Accordingly the appeal fails and is dismissed.

7. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

(iii) The present appellant / Oriental Insurance Company is directed to deposit the compensation awarded by the Tribunal of i.e., Rs.40,000/- (less the amount 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 MCOP.No.10 of 2007 on the file of the Motor

Accident Claims Tribunal / Additional District Judge, Fast Track Court No.3, Vriddhachalam within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

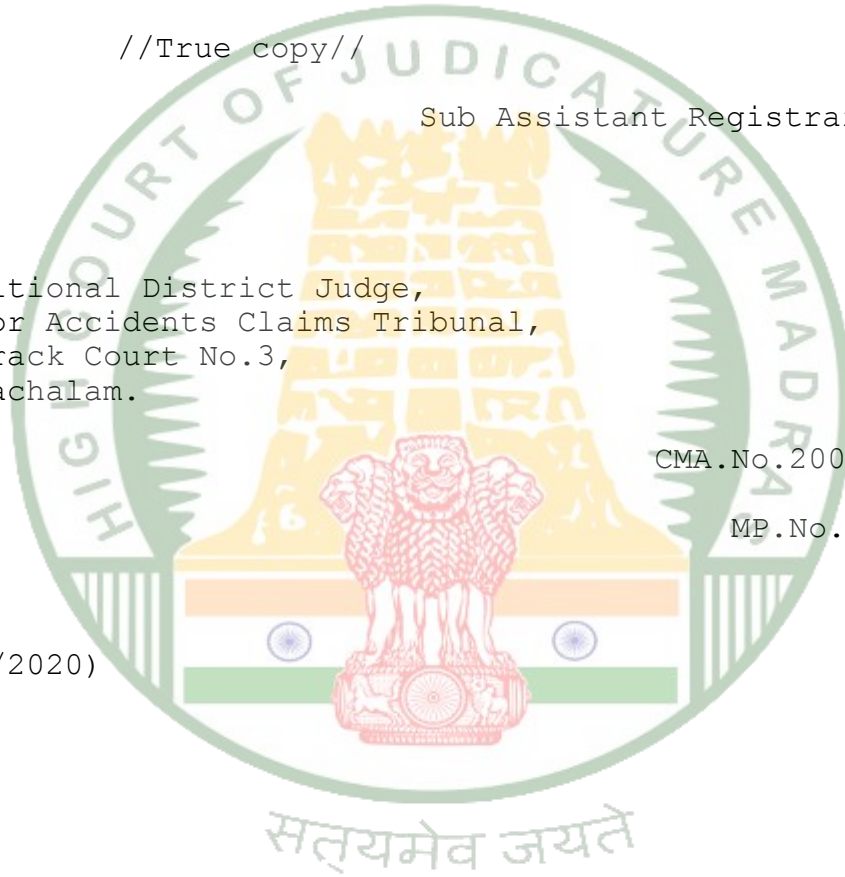
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To

1.The Additional District Judge,
The Motor Accidents Claims Tribunal,
Fast Track Court No.3,
Vriddhachalam.

CMA.No.2008 of 2010
and
MP.No.1 of 2010

SSD(CO)
GMY(10/02/2020)



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