

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2314 of 2009 and
M.P.No.1 of 2009

The National Insurance Company Limited,
Salem Main Road, Mettur, Salem. ... Appellant/2nd Respondent

Vs.

1. Varadharaj1st Respondent/claimant
2. Krishnamoorthy
3. K.Subramani ... Respondents 2 & 3/
Respondents 1 & 3

Prayer This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders dated 29.01.2009 passed in M.C.O.P.No.126 of 2004 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.R.Neelakandan for R1

J U D G M E N T

The National Insurance Company Limited, Salem, who is the 2nd respondent in MCOP No.126 of 2004 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem has filed the present appeal, questioning their liability to pay compensation amount to the claimants.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 16.08.2003. The case of the claimant is that when he was riding his two wheeler TVS 50 bearing registration No.28 N 366, near Roja Marriage hall, Belur, a speeding van bearing registration No. TN 20 C 2090 belonging to the 2nd and 3rd respondents hit the motorcycle, as a result of which, he sustained injuries all over

his body. According to the claimant, the rash and negligent driving of the driver of the van was the cause of accident and that since the owners of the van, the 2nd and 3rd respondents insured their vehicle with the appellant herein/insurance company, all of them are jointly and severally liable to pay compensation to him.

3. The Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem, after analysing the evidence on record, held that since the 2nd respondent though sold his vehicle in favour of the 3rd respondent, he did not take steps to get the registration certificate changed in the name of the 3rd respondent and hence, the insurance company should pay the compensation of Rs.1,94,869/- to the claimant together with interest at the rate of 7.5% p.a. and then recover the same from the 2nd and 3rd respondents herein. Questioning their liability to pay compensation amount to the claimant, the insurance company has filed the appeal.

4. Mr.D.Bhaskaran, learned counsel appearing for the appellant/insurance company contended that on the date of accident, the 3rd respondent was the owner of the vehicle and since the 2nd respondent did not take steps to get the registration certificate changed in the name of the 3rd respondent, the insurance company cannot be held liable to pay compensation, as there was not privity of contract between them and the 3rd respondent.

5. At this juncture, it is relevant to extract Section 157(1) of the Motor Vehicles Act, 1988, which reads thus.

Transfer of certificate of insurance.—

(1) Where a person in whose favour the certificate of insurance has been issued in accordance with the provisions of this Chapter transfers to another person the ownership of the motor vehicle in respect of which such insurance was taken together with the policy of insurance relating thereto, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. 1
[Explanation.—For the removal of doubts, it is hereby declared that such deemed transfer shall include transfer of rights and liabilities of the said certificate of insurance and policy of insurance.]

(2) The transferee shall apply within fourteen days from the date of transfer in the prescribed form to the insurer for making necessary changes in regard to the fact of transfer in the certificate of insurance and the policy described in the certificate in his favour and the insurer shall make the necessary changes in the certificate and the policy of insurance in regard to the transfer of insurance.

As per Sub Section (1), Section 157 of the Motor Vehicles Act, if the ownership of the vehicle is transferred to another person, the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of its transfer. Sub Section (2) of Section 157 of the Motor Vehicles Act also states that the transferee should intimate the transfer of ownership to the insurance company to facilitate the insurance company to make necessary changes in the certificate of insurance and in the policy. However, Section 157 of the Motor Vehicles Act does not exonerate the insurance company from its liability to pay compensation, in case of failure on the part of the owner of vehicle for non-fulfilment of the requirement contemplated under Section 157 of the Motor Vehicles Act. By operation of Section 157(1) of the Motor Vehicles Act, the certificate of insurance and the policy described in the insurance stands automatically transferred to the name of the transferee, the 3rd respondent herein. Therefore, the insurance company is liable to pay compensation to the claimants. The insurance company further cannot have recourse to recover the compensation amount from the owners of the vehicle merely because they did not comply with the requirements contained in Section 157 of the Motor Vehicles Act. In the facts and circumstances, the appeal is liable to be dismissed.

6. In the result, the civil miscellaneous appeal is dismissed. No costs. The connected miscellaneous petition is closed. However, the orders passed in MCOP No.126 of 2004 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Salem dated 29.01.2009 is modified as follows.

(i) The appellant, Insurance Company's liability is joint and several and they cannot have recourse to pay and recovery.

-Sd/-
Asst.Registrar (CS I)

/true copy/

Sub Asst. Registrar

mst
To

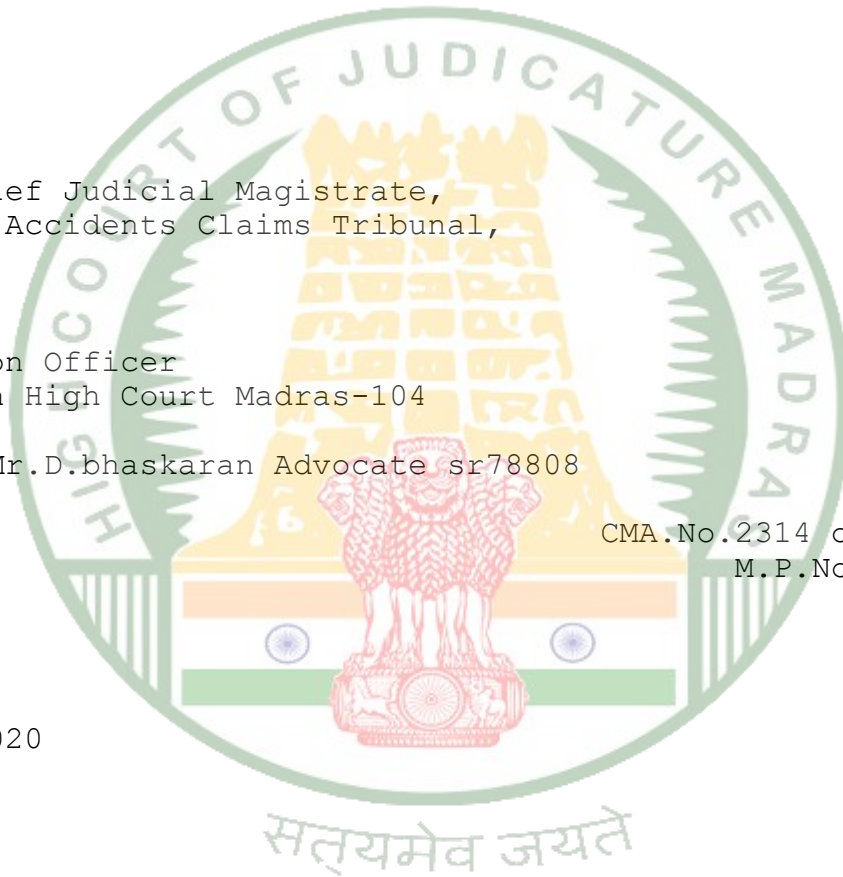
1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Salem.

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The Section Officer
VR Section High Court Madras-104

+1 cc to Mr.D.bhaskaran Advocate sr78808

CMA.No.2314 of 2009 and
M.P.No.1 of 20109

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