

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2108 of 2011 and
M.P.No.1 of 2011

National Insurance Co. Ltd.,
rep. by its Branch Manager,
No.40, Rastha manaveli street,
No.2 road, Mayiladuthurai. ... Appellant

Vs.

1.Thengovan
2.Jeysellan ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 05.01.2011, in M.C.O.P.No. 162 of 2009 on the file of the Motor Accidents Claims Tribunal (District Court) Karaikal.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.T.Susindran for R1
R2 - not ready in notice

JUDGMENT

This Civil Miscellaneous Appeal is filed by the National Insurance Company Limited, challenging, the Judgment and decree passed in M.C.O.P.No. 162 of 2009 on the file of the Motor Accidents Claims Tribunal (District Court) Karaikal.

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

The first respondent/claimant is the owner of the tipper lorry bearing Registration No. PY 02 C 8979. The second respondent herein is the driver of the said tipper lorry. On 16.06.2009, at about 05.00 am, the second respondent went on the lorry bearing Registration No. PY 02 C 8979 to load goods on Mayiladuthurai - Elanthangudi road. When the lorry went near Agarakeerankudi bus stop, it dashed on the road side tree and the hydraulic tipper attached with the lorry came out and totally damaged. The first respondent/claimant after verification of the vehicle found out that the vehicle suffered

damages. The accident was due to the sheer negligence on the part of the second respondent herein. The first respondent/claimant has lost his source of income. He has also spent Rs.1,20,000/- towards the repairing charges. A case in Cr. No. 228 of 2004 was registered with the Perambur Police Station and the case is pending for investigation. Since, the first respondent/claimant insured his vehicle with the present appellant, they are liable to pay compensation for the damages caused to the said tipper lorry.

3. The first respondent/claimant filed a claim petition before the Motor Accidents Claims Tribunal, District Court, Karaikal under Sections 140 and 166(1) of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/- for the damages caused to the said tipper lorry.

4. The learned Tribunal, after analysing the evidence on record, awarded a compensation of Rs.75,000/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Aggrieved over the orders passed by the Tribunal, the National Insurance Company Limited have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. The learned counsel appearing for the appellant - National Insurance Company Limited has relied on the decision in the case of N.Somasundaram vs. 1.Ms.Ramachandran Bricks and 2. United India Insurance Company Limited in C.M.A.No. 1608 of 2006, wherein, it is stated that only tortious claims should be preferred before the Claims Tribunal and unless some tort is committed by a third party, no party can approach the Claims Tribunal. Even if the claim is based on contract, the aggrieved party can only go before a Civil Court for any redressal. He would therefore contend that, since, in the present case, the tortfeasor is none other than the first respondent/claimant's driver, this present case is not maintainable and the orders passed by the Tribunal is liable to be set aside.

6. Heard both sides.

7. A perusal of the records shows that the Insurance Company filed a counter statement before the Tribunal alleging that the driver of the first respondent/claimant himself caused the accident on his own default by hitting against the roadside tree, and therefore, the Insurance company is not liable to pay any compensation. They further stated in the counter that the first respondent/claimant without making any claim with the Insurance company, unnecessarily filed the claim petition as a third party claim. The learned Tribunal has treated this case as if it is a case arising out of the section 165 of the Motor Vehicles Act, 1988 and directed the Insurance Company to pay

compensation to the first respondent/claimant.

8. In view of the decision in C.M.A.No. 1608 of 2006 (cited supra), it is clear that when a property was not damaged by a third party, the petitioner who claims compensation has to move the Civil Court or Consumer Court as he may be advised. Section 165 of the Motor Vehicles Act, would clearly demonstrate and indicate that the Motor Accidents Claims Tribunal has got no jurisdiction to decide the dispute between the insurer and the insured relating to damage caused to insured's property. Accordingly, the orders passed by the Tribunal is hereby set aside. However, taking note of the fact that there is a damage to the said tipper lorry and the accident has been proved in the manner known to law, the first respondent/claimant is at liberty to move the Civil or Consumer court, as the case may be, for the purpose of filing a claim petition. Time taken for the pendency of the claim petition before the Motor Accidents claims Tribunal and this Civil Miscellaneous Appeal before this Court, shall stand excluded while calculating the period of limitation.

9. In the result,

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

(ii) The order passed by the Tribunal is set aside.

(iii) The learned counsel appearing for the appellant submitted that, at the time of admission, the present appellant-Insurance Company has deposited Rs.25,000/- and the same is permitted to be withdrawn after following due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The District Court, Karaikal.

+1 cc to Mr.T.Susindran, Advocate, Sr.No. 15857

+1 cc to Mr.D.Bhaskaran, Advocate, Sr.No. 16394

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M.P.No.1 of 2011

CSL/29.05.2019