

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.108 of 2019

and

C.M.P.No.471 of 2019

- 1.Sellakkannu
- 2.Samboornam
- 3.Palaniammal
- 4.Annakkili
- 5.Sumathi
- 6.Minor Selvam

[Represented by his mother, next
friend natural guardian Tmt.Samboornam].

...Appellants

Vs.

- 1.M.Murugan
[R1 exparte before the Tribunal]

- 2.The Branch Manager
National Insurance Company Limited,
Bhavani,
Erode District.

Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree in M.C.O.P.No.569 of 2000, dated 24.07.2002 on the file of Motor Accident Claims Tribunal [Additional District Judge cum Chief Judicial Magistrate Court], Perambalur.

For Appellants : Mr.K. Bijai Sundar

For Respondent-2 : Mr.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award and decree dated 24.07.2002 made in M.C.O.P.No.569 of 2000 on the file of Motor Accident Claims Tribunal [Additional District Judge cum Chief Judicial Magistrate], Peramballur, by the claimants.

2. The appellants are claimants in M.C.O.P.No.569 of 2000 on the file of Motor Accident Claims Tribunal [Additional District Judge cum Chief Judicial Magistrate], Peramballur. They filed the said claim petition claiming a sum of Rs.7,50,000/- as compensation for the death of one Jaganathan, who died in the accident that took place on 05.10.1998.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the mini van bearing Registration No.TN-33-F-8809 belonging to the 1st respondent and directed the 2nd respondent-Insurance Company to pay a sum of Rs.2,80,000/- as compensation to the appellants.

4.The appellants/claimants have filed this appeal challenging the portion of the award of the Tribunal exonerating the 2nd Respondent/Insurance Company from its liability.

5.According to the learned counsel appearing for the appellants, the Tribunal erroneously believed the 2nd respondent and consequently held that the vehicle of the 1st respondent was not insured with the 2nd respondent at the time of accident. The Tribunal erred in holding that the driver of the vehicle did not have licence and hence the 2nd respondent is not liable to pay compensation. The Tribunal on misapplying the facts of law, erroneously dismissed the claim petition as against the 2nd respondent.

6.The learned counsel appearing for the 2nd respondent contended that in the counter statement it has been specifically denied that the vehicle of the 1st respondent was not insured with the 2nd respondent and the appellants have to prove their claim. The appellants have also failed to prove that the 1st respondent was having valid driving licence to drive the motor cycle. The Tribunal appreciating the evidence on record, rightly dismissed the claim petition against the 2nd respondent/Insurance Company and therefore, prayed for dismissal of the above appeal.

7. Heard the learned counsel appearing for the appellants as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

8. The case of the appellants is that the vehicle of the 1st respondent was insured with the 2nd respondent. The 1st respondent having remained *exparte* before the Tribunal, the 2nd respondent/Insurance Company denied that the vehicle of the 1st respondent was insured with them. They also took a stand that the driver of the vehicle, belonging to the 1st respondent bearing Registration No. TN-33-F-8809, did not possess valid driving licence at the time of accident. When a specific stand is taken by the 2nd respondent that the vehicle of the 1st respondent was not insured with the 2nd respondent, it is the duty on the part of the appellants to prove that the vehicle of the 1st respondent was insured with the 2nd respondent. The appellants have failed to discharge their duty in this regard. In view of the failure on the part of the appellants to prove that the offending vehicle was insured with the 2nd respondent, the Tribunal has rightly dismissed the claim petition against the 2nd respondent and this Court does not find any infirmity in the order passed by the Tribunal.

9.In the result, the Civil Miscellaneous Appeal is dismissed and the award dated 24.07.2002 passed in M.C.O.P.No.569 of 2000 is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

21.01.2019

Index : Yes / No
Speaking Order : Yes/ No
msm

To

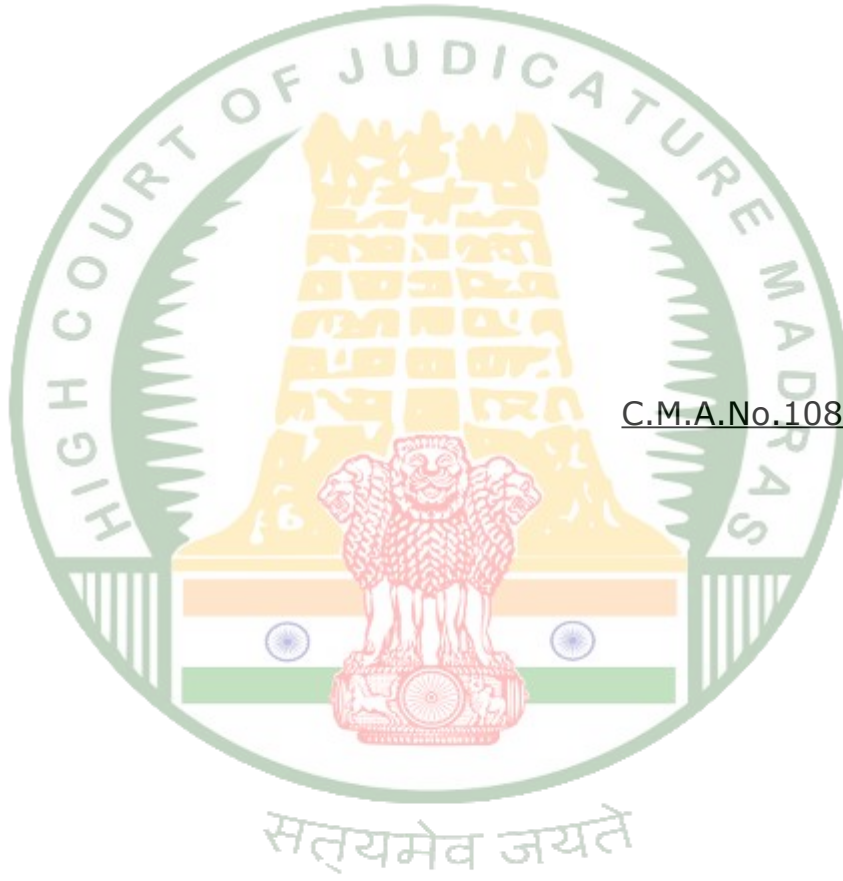
1. The Additional District Judge cum
The Chief Judicial Magistrate,
[Motor Accident Claims Tribunal]
Peramballur.
2. The Branch Manager,
National Insurance Company Limited,
Bhavani, Erode District.
3. The Section Officer, V.R.Section,
High Court of Madras, Chennai-600 104.

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V.M.VELUMANI,J.

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