



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.07.2019
CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) (NPD)No.1728 of 2007
and
C.M.A. (MD)No.1528 of 2007
and
M.P. (MD)Nos.1 and 1 of 2007

The Branch Manager,
The New India Assurance Company Limited,
Dharapuram : Petitioner/Appellant
vs.

1.Chenniyappan
2.Ponnuchamy : Respondents in C.R.P. (MD)No.1728 of 2007

1.Jeganathan
2.Ponnuchamy : Respondents in C.M.A. (MD)No.1528 of 2007

PRAYER in C.R.P. (MD)No.1728 of 2007: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decree, dated 09.02.2007 made in M.C.O.P.No.283 of 2001 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Palani.

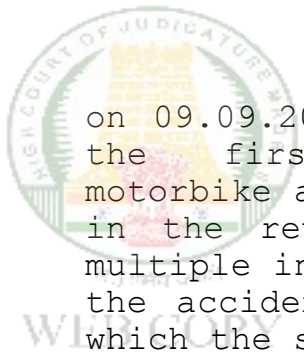
PRAYER in C.M.A. (MD)No.1528 of 2007: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree, dated 09.02.2007 made in M.C.O.P.No.284 of 2001 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Palani.

For Petitioner/Appellant : Mr.K.Murugesan
For R1 : Mr.M.Mohammed Ibrahim Saibu
for M/s.Ajmal Associates
For R2 : Mr.C.K.M.Appaji
(In both cases)

COMMON JUDGMENT

The Insurance Company of one of the vehicles involved in an accident is the revision petitioner and appellant in the revision and appeal, respectively.

2.The appellant is the insurer of a two wheeler, owned by the second respondent herein. It is stated in the claim petition that
<https://hcservices.ecourts.gov.in/hcservices/>



on 09.09.2000, the second respondent dashed against the vehicle of the first respondent in the appeal, while travelling in his motorbike along with the other claimant, who is the first respondent in the revision petition, and that both the claimants suffered multiple injuries. It was further stated in the claim petition that the accident was caused due to the rash and negligent manner, in which the second respondent drove his vehicle.

3.The appellant, who is the insurer of the vehicle, owned by the second respondent herein, disputed his liability mainly on the ground that the second respondent herein had no driving licence at the time of accident and that therefore, the Insurance Company is not liable. During the course of proceedings, the second respondent herein admitted that he was under the influence of alcohol at the time of accident. The Doctor certificate also proved that the second respondent had consumed alcohol at the time of accident.

4.The Tribunal, after considering all the evidence on record, found that the accident was caused due to the rash and negligent driving of the second respondent and that he was under influence of alcohol at the time of accident. Finally, the liability was fixed on the appellant/revision petitioner, by holding that the insurer of the vehicle was responsible for the accident. Aggrieved by the same, the Insurance Company has preferred the above appeal as well as the revision petition.

5.The learned Counsel for the Insurance Company submitted that the second respondent, who is the owner of TVS 50, which caused the accident, had no driving licence and that the appellant/petitioner is not liable to indemnify the second respondent. It is the specific case of the appellant that owner of the TVS 50, the second respondent herein is liable, as he has violated the policy condition.

6.It is not in dispute that the accident was caused due to the rash and negligent driving of the second respondent. It is also not in dispute that the second respondent was solely responsible for the accident. The question is whether the Insurance Company is liable to indemnify. The Law is settled that the liability of Insurance Company cannot be absolved as against third parties, even, if there are violation of policy conditions. In that view of the matter, the contention of the Insurance Company cannot be accepted. However, the Tribunal ought to have given liberty to the Insurance Company to recover the money from the second respondent.

7.As a result, this Civil Miscellaneous Appeal and the Civil Revision Petition are partly allowed. The order and decree, dated 09.02.2007 made in M.C.O.P.Nos.283 and 284 of 2001 on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Palani, are confirmed, insofar as the quantum of compensation and the liability of appellant/Insurance Company to indemnify the second



respondent. However, the appellant/Insurance Company is given liberty to recover the amount paid pursuant to the award of Tribunal from the second respondent. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge,
The Motor Accidents Claims Tribunal
/ Subordinate Court, Palani.

Copy to: The Section Officer,
Vernacular Records, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to Mr.C.K.M.APPAJI, Advocate (SR-78770[F] dated 31/07/2019)
+1 CC to Mr.K.MURUGESAN, Advocate (SR-78774[F] dated 31/07/2019)
+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-79032[F] dated
01/08/2019)
+1 CC to Mr.K.MURUGESAN, Advocate (SR-78773[F] dated 31/07/2019)

C.R.P. (MD) (NPD)No.1728 of 2007
and

C.M.A. (MD)No.1528 of 2007
31.07.2019

cmr

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