

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1515 of 2009

and

M.P.No.1 of 2009

(Through Video Conferencing)

The National Insurance Company Ltd.,
No.165, Nethaji Road,
Manjakuppam,
Cuddalore. ... Appellant/2nd Respondent

Vs.

1.K.Vetrivel @ Vetrivelan1st Respondent/Petitioner

2.N.Kalyan Sundaram ... 2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 06.02.2009 made in M.C.O.P.No.174 of 2006 on the file of the Motor Accidents Claims Tribunal (II Additional Sub Judge), Cuddalore.

For Appellant : Mr.D.Bhaskaran

For 2nd Respondent : No appearance

R1 : No such address

J U D G E M E N T

Though this appeal is of the year 2009, only notice on the 2nd respondent owner of the insured motor cycle has been served and notice on the 1st respondent/claimant has remained unserved. Since no adverse orders are proposed to be passed against the respondents, this Civil Miscellaneous Appeal is taken up for final hearing.

2. The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 06.02.2009 passed by the Motor Accidents Claims Tribunal, Cuddalore (II Additional Subordinate Court, Cuddalore) in M.C.O.P.No.174 of 2006.

3. By the impugned Judgment, the Tribunal has awarded a sum of Rs.1,26,162.50 as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit, to the 1st respondent/claimant for injuries suffered by him.

4. The claim petition arose from an accident that took place on 05.08.2005 while the 1st respondent was allegedly traveling as a pillion rider in a motor cycle bearing registration TN-21-C-8862 belonging to the 2nd respondent insured with the appellant Insurance Company, when the driver of the motor cycle allegedly drove the motor cycle in a rash and negligent manner and hit against a bridge, as a result of which, the 1st respondent/claimant suffered grievous injuries.

5. I have heard the learned counsel for the appellant. I have also perused the evidence on records and the impugned Judgment passed by the Tribunal.

6. The main contention of the appellant Insurance Company is that the 1st respondent/claimant have manipulated the evidence to make it seems as if the 1st respondent and the owner of the motorcycle, namely the 2nd respondent were involved in the accident. The Tribunal has given a benefit of doubt to the 1st respondent/claimant stating that the appellant has not discharged its burden of proof to disprove the case of the 1st respondent/claimant. I do not find any case to interfere with the conclusion reached in the impugned Judgment and Decree of the Tribunal. Therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

7. At the same, since the appellant Insurance Company has filed a complaint before the CBCID, liberty is given to the appellant Insurance Company to initiate appropriate proceedings against the respondents in case any adverse report is generated from the said investigation. Needless to state that such recovery proceedings shall be in accordance with law.

8. Though the Tribunal has directed the appellant Insurance and the 2nd respondent owner of the motorcycle to deposit the compensation jointly or severally, in my view, it is the appellant Insurance Company which is liable to pay the compensation to the 1st respondent/claimant as the appellant Insurance Company has contracted a contract of indemnity to indemnify the 2nd respondent against any liability that may be fastened against him under the Motor Vehicles Act, 1988.

9. The appellant Insurance Company is therefore directed to deposit the compensation awarded by the Tribunal together with interest and cost to the credit of the above M.C.O.P, less any

amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment, before the Tribunal.

10. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest and cost, less any amount already withdrawn, by filing suitable application before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal is dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen
To:-

- 1.The II Additional Subordinate Judge,
Motor Accidents Claims Tribunal
Cuddalore.
- 2.The Section Officer,
VR Section, High Court,
Madras-104.

C.M.A.No.1515 of 2009
and M.P.No.1 of 2009

ssd[col]
srg 13/05/2021

सत्यमेव जयते

WEB COPY