

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.105 of 2015  
and M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,  
Third Party Claims Cell,  
Thiruvallur.

.... Appellant/2<sup>nd</sup> Respondent

Vs.

1.Jagan @ Jagadeesan ....1<sup>st</sup> Respondent/ Petitioner

2.Selvaraju ....2<sup>nd</sup> Respondent /1<sup>st</sup> Respondent

3.The Insurance Regulatory  
Development Authority  
Hyderabad.

4.Union of India  
rep by its Secretary  
Ministry of Law  
Justice & Company Affairs  
New Delhi.

5.Union of India  
represented by its Secretary  
Ministry of Road and Surface Transport  
New Delhi.

6.State of Tamil Nadu  
represented by its Secretary  
Transport Department  
Fort St. George, Chennai.

7.The Director General of Police,  
Mylapore, Chennai.

... Respondents

(RR3 to 7 suo motto impleaded vide  
order of this Court dated 18.02.2015 made in  
C.M.A.No.105 of 2015 & M.P.No.1 of 2015)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2014 made in M.C.O.P.No.180 of 2013 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri.

For Appellant : Mrs.C.Harini for  
Mr.N.Vijayaraghavan

For R1 : Mr.N.Ramesh for  
Mr.R.Suresh Kumar

For R2 : No appearance

For R3 : Mr.M.B.Raghavan for  
Mr.M.B.Gopalan

For R4 and R5 : Ms.S.S.Meenakumari  
Senior Central Govt. Standing Counsel

#### J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 19.08.2014 made in M.C.O.P.No.180 of 2013 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri.

2.The appellant/Insurance Company is the 2<sup>nd</sup> respondent in M.C.O.P.No.180 of 2013 on the file of Motor Accident Claims Tribunal, Sub Court, Ponneri. The 1<sup>st</sup> respondent filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.01.2012.

3.According to the 1<sup>st</sup> respondent, on the date of accident i.e. on 30.01.2012 at about 04.15 p.m., while he was riding in his motorcycle from Ponneri to Thatchur Kootroad in Redhills Road, a tanker lorry belonging to the 2<sup>nd</sup> respondent came in the same direction driven by its driver in a rash and negligent manner, hit the motorcycle and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained grievous injuries and therefore, he has filed the above claim petition claiming compensation.

4.The 2<sup>nd</sup> respondent/owner of the tanker lorry remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement

denying the averments made by the 1<sup>st</sup> respondent and contended that there was delay in lodging the complaint and registering F.I.R. The accident has not occurred due to rash and negligent driving by the driver of the tanker lorry belonging to the 2<sup>nd</sup> respondent and therefore, the appellant/Insurance Company is not liable to pay compensation.

6.Before the Tribunal, the 1<sup>st</sup> respondent examined himself as P.W.1 and one Dr.J.R.R.Thiyagarajan was examined as P.W.2 and marked ten documents as Exs.P1 to P10. The appellant did not let in any oral and documentary evidence.

7.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 tanker lorry belonging to the 2<sup>nd</sup> respondent and directed the appellant/Insurance Company to pay a sum of Rs.2,24,500/- as compensation to the 1<sup>st</sup> respondent.

8.Against the said award dated 19.08.2014 made in M.C.O.P.No.180 of 2013, granting compensation to the 1<sup>st</sup> respondent, the appellant/Insurance Company has come out with the present appeal questioning the liability fastened on them.

9.The learned counsel appearing for the appellant/Insurance Company contended that the policy issued by the appellant was only a Carrier Legal Liability Policy and not a Motor Policy, which does not cover third party liability. The Tribunal without properly appreciating the policy, erroneously fastened the liability on the appellant/Insurance Company and prayed for setting aside the award of the Tribunal.

10.Though notice was served on the 2nd respondent and his name is printed in the cause list, there is no representation on behalf of him either in person or through counsel.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1<sup>st</sup> respondent, 3<sup>rd</sup> respondent and the learned Senior Central Government Standing Counsel appearing for the respondents 4 & 5 and perused all the materials available on record.

12.From the materials available on record, it is seen that the appellant/Insurance Company has not taken a plea in the counter statement filed before the Tribunal that the policy issued by them is not a Motor Policy and it is only a Carrier Legal Liability Policy, which does not cover third party liability. The appellant has also not let in any evidence to prove that the policy does not cover third party liability. The appellant without any pleadings before the Tribunal cannot contend that the policy issued by the appellant is only a Carrier Legal Liability Policy and not a Motor Policy and it

does not cover third party liability. In view of the above, the award of the Tribunal does not warrant any interference by this Court and the same is hereby confirmed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,24,500/- awarded by the Tribunal as compensation to the 1<sup>st</sup> respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1<sup>st</sup> respondent is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,  
Motor Accidents Claims Tribunal  
Ponneri.

+lcc to Mr.N.Vijayaragavan , Advocate SR.No. 2819

+lcc to Mr.R.Suresh Kumar , Advocate SR.No. 2106

+lcc to M/s.Meena Kumari, Advocate SR.No. 2152

C.M.A.No.105 of 2015

BA co

A.SK(27.04.2021)

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