

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1873 OF 2015

The National Insurance Company Limited
2-S, Thirumangalam North Street,
Thallakulam,
Madurai-625 002.

.. Appellant

Vs.

1. Karthik

2. Thirumurugan

3. M/s.SAVE

Rep.by its Director Aloysius
8-4-57A, KNVPR Palli,
Vathalakundu Road,
Nilakottai, Madurai District.

.. Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 27.09.2013 made in M.A.CT.O.P.No.696 of 2005, on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District, Fast Track Court No.2, Tiruppur.

For Petitioner : Mr.N.B.Surekha

For Respondents : Mr.J.Franklin for R1
Non-appearance for R3

J U D G M E N T

The award dated 27.09.2013 passed in M.A.C.T.O.P.No.696 of 2005 is under challenge in the present appeal.

2. The accident occurred on 31.12.2004 at about 11.30 hours in front of south rotary club, Nataraja Theater Road, Tiruppur. Tiruppur South Police Station registered a case in Crime No.2389 of 2004 under Section 279 and 337 I.P.C.

3. On account of accident, the first respondent/claimant sustained grievous injury on left leg and all over body. The Tribunal adjudicated the issues with reference to the documents as well as evidence produced by the respective parties. The Tribunal found that the auto driver is responsible for the accident. On account of negligence committed on the part of the driver of the auto, the accident occurred and the claimant sustained injury. As far as the policy is concerned, the learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that there is no coverage, in view of the fact that sitting capacity permitted is one in all and therefore, the driver alone is permitted and the claimant was traveling along with driver and therefore, there is a violation of the policy condition as well as permit granted by the Registering authority.

4. The learned counsel for the appellant submitted the copy of the Registration Certificate, wherein it is clearly stated that sitting capacity permitted including the driver is one in all. The vehicle was Bajaji Tempo and it is a three-wheeler auto. Thus, it is clear that the claimant has violated the permit conditions as well as it is found that there is no policy coverage, as far as the appellant/Insurance Company is concerned.

5. The Tribunal proceeded on the basis that the policy was in existence and the factum regarding the accident was established by the claimant and the claimant sustained grievous injuries and accordingly, granted the compensation. Undoubtedly, in the present case on hand, the accident occurred and the claimant sustained injury. However, the liability is fixed only on the owner of the vehicle and not against the Insurance Company as there is no coverage. The Insurance Policy being a contract, the company is entitled to deny the compensation, if there is a violation of the terms and conditions. In this case, there is no coverage, as far as the claimant is concerned, since he was a gratuitous passenger in a vehicle where there is no permit to allow the passenger to travel. This being the factum, this Court is of the considered opinion that the Tribunal has committed an error in fixing the liability on the Insurance Company instead of fixing the liability on the owner of the vehicle. In such case, the owner of the vehicle is liable to pay compensation for the victim. This being the principles to be followed, the Judgment and Decree dated 27.09.2013 passed in M.C.O.P.No.696 of 2005 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs.

6. However, the first respondents/claimant is at liberty to execute the award passed in M.C.O.P.No.696 of 2005 dated

27.09.2013 against the third respondent in this appeal, who is the owner of the vehicle for the purpose of recover the compensation amount.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Vehicle Accidents Claims Tribunal,
Additional District,
Fast Track Court No.2,
Tiruppur.

Copy To

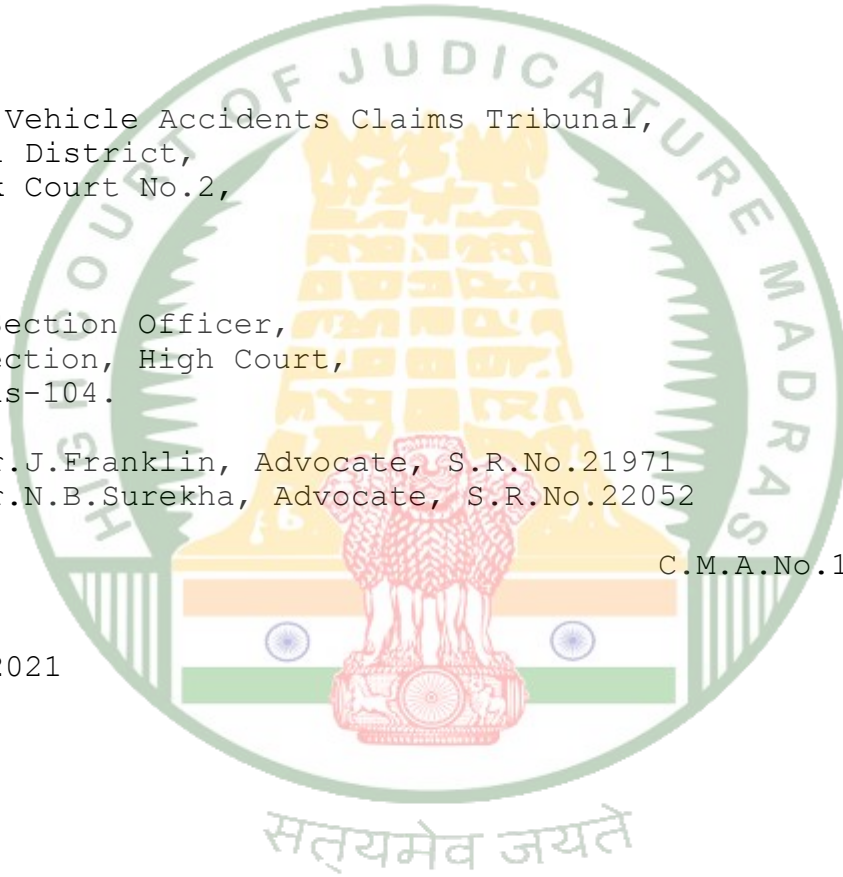
The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.J.Franklin, Advocate, S.R.No.21971

+1cc to Mr.N.B.Surekha, Advocate, S.R.No.22052

C.M.A.No.1873 of 2015

KS (CO)
CS/16/04/2021



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