

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:05.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1662 of 2016

Palanisamy

.. Appellant

/versus/

1.P.Boologathur Udaiyar

2.M/s IFFCOTOKIO General Insurance Co.Ltd.,
No.138/2, II Floor, LMR Shopping Arcade,
Opp. To MGM Theatre, Salem Main Road,
Namakkal 637 001.

(Notice to 1st respondent may be dispensed with
as he was set exparte before the Tribunal)

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order (award) dated 03.06.2014 in M.C.O.P.No.1546 of 2012 on the file of the Special Sub-Court No.1, (The Motor Accident Claims Tribunal) at Salem for liability and for enhancement.

For Appellant :Mr.V.Sekar

For Respondents :No appearance

JUDGMENT

(The case has been heard through Video Conferencing)

Heard the learned counsel appearing for the appellant.

2.The Tribunal has exonerated the Insurance Company and fixed the liability on the owner of the Vehicle. The reason stated in the award for such a finding is that there is a discrepancy regarding the date and the manner of the accident. The inherent contradictory evidence placed by the claimant has warranted the Tribunal to exonerate the Insurance Company.

3.The case of the petitioner is that on 12.10.2012 when he was travelling on a bicycle on Salem-Attur bye-pass road, at about 11.30 hours, a motor cycle bearing Reg.No. TN 28 AX 4721 dashed him from the rear side. First Information Report was registered by the Salem Police station in Crime No.601 of 2012 under Sections 279 and 337 of IPC. The First Information Report was registered on 18.10.2012 six days after the accident showing the date of the accident as 12.10.2012 at about 11.30 hours. This is in consonance with the facts narrated in the claim petition. However, the medical records, namely, Ex.X1 produced by

Saravana Hospital (P) Ltd. Indicates that the claimant was admitted in the hospital on 11.10.2012 at 2.00 p.m., itself with medical history bleeding nose followed by the accident while riding the bicycle.

4.The Insurance Company in the counter has specifically pleaded that the accident never occurred in the manner in which the claimant has stated in his petition. In collusion with the owner-cum-rider of the two wheeler false Information has been filed and the owner has pleaded guilty for the accident never occurred as per the First Information Report. To substantiate their claim, the Insurance Company has summoned the medical records of the Saravana Hospital and established that the deposition of the claimant, First Information Report and the claim petition regarding the date, time and manner of the accident, are false.

5.On scrutinising the records and the findings of the Tribunal, this Court is convinced that the claim petition does not reflect the true facts and the claimant has not truly sworn before the Court in his proof affidavit regarding the accident. In such circumstances, if really, there was any error in the date and facts, the claimant had sufficient an opportunity to carry out the amendment, which the

claimant has not chosen to do. Even after the respondents have established the falsehood of the claimant through evidence. In the appeal, the submission is made to remand the matter back to affording opportunity to the claimant to reconcile the error.

6.This Court is of the view that the fundamental error in the claim petition and the deposition cannot be rectified and reconciled through an order of remand. The claimant is to satisfy with the award against the owner, who has gone before the Criminal Court to plead guilty of negligence which has never occurred on that date.

7.Accordingly, **this Civil Miscellaneous Appeal is dismissed.** The order of the Tribunal is confirmed. The claimant is to satisfy the award by proceeding against the rider/owner of the vehicle. No costs.

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Index:yes/no

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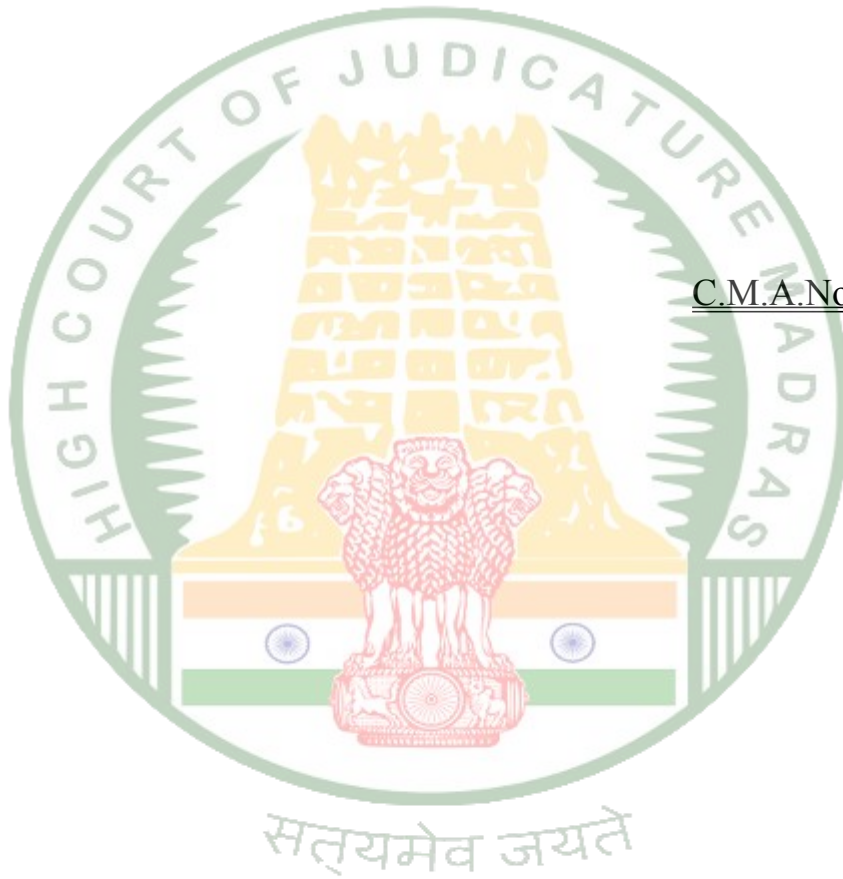
To:

The Motor Accident Claims Tribunal,
Special Sub Court No.1, Salem.

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Dr.G.JAYACHANDRAN,J.

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