

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.428 of 2015
and M.P.No.1 of 2015

M/s.Iffco Tokio General Insurance Co. Ltd.,
2nd Floor, No.28, North Usman Road,
T.Nagar, Chennai. Appellant/2nd Respondent

Vs.

1.Vignesh (Minor)
(Rep. by Mother Guardian Kavitha)

2.Wahidkhan Respondents/Petitioner
and 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.02.2014 made in M.C.O.P.No.2468 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellant: Ms.C.Harini
for Mr.M.B.Gobalan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 14.02.2014 made in M.C.O.P.No.2468 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.2468 of 2006 on the file of Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in a road accident that took place on 04.12.2005.

3.According to the 1st respondent, on the date of the accident i.e. on 04.12.2005, at about 13.45 hours, while he was proceeding on the mud portion of the road on Ulundurpet to

Vridhachalam Main Road, near Kattunemili Bus Stop, a speeding Mini Auto belonging to the 2nd respondent, driven by its driver in a rash and negligent manner, dashed against the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries. Therefore, the 1st respondent has filed above claim petition claiming compensation against the 2nd respondent as well as appellant.

4.The 2nd respondent owner of the Mini Auto remained ex parte before the Tribunal and hence notice to him, is dispensed with.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the driver of the Mini Auto did not possess valid driving license and the said vehicle was not insured with the appellant at the time of accident. The vehicle had no valid permit, fitness and registration certificate. The appellant further stated that the 1st respondent age, injuries, treatment, permanent disability and medical expenses are all false and denied. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent.

6.Before the Tribunal, mother of the 1st respondent, examined herself as P.W.1, one Malaiarasan an eyewitness was examined as P.W.2 and Dr.M.Balamurugan (Ortho) was examined as P.W.3 and marked seven documents as Exs.P1 to P7. On the side of the appellant/Insurance Company one Suresh/officer of the Insurance Company was examined as R.W.1 and marked one document as Ex.R1.

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 Mini Auto belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said Mini Auto, to pay a sum of Rs.1,43,020/- as compensation to the 1st respondent at the first instance and then recover the same from the 2nd respondent/owner of the vehicle.

8.Questioning the liability fixed on them by the Tribunal in the award dated 14.02.2014 made in M.C.O.P.No.2468 of 2006, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in ordering pay and recovery when there is no contract of insurance on the date of accident i.e. on 04.12.2005. Ex.R1 is the policy issued by the appellant to the offending vehicle for the period from

31.10.2006 to 30.10.2007. The appellant has not issued any other policy before issuing Ex.R1. In view of the same, the order of pay and recovery by the Tribunal is erroneous and prayed for setting aside the award of the Tribunal.

10.Heard, the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

11.It is the contention of the 1st respondent that on the date of accident, the offending vehicle was insured with the appellant and insurance policy was in force. To substantiate the same, the 1st respondent produced Ex.P3/Motor Vehicle Inspector's Report. In Ex.P3/Motor Vehicle Inspector's Report it is stated in 'Column 9' that period of insurance policy is from 29.10.2005 to 28.10.2006, Iffco-Tokio General Insurance Company Ltd., T.Nagar, Chennai - 17. Motor Vehicle Inspector is a public official and there is no necessity to mention wrong details in the report. In view of the same, the contention of the appellant that policy was issued only on 31.10.2006 for the period from 31.10.2006 to 30.10.2007 is not acceptable. The contention of the appellant is that there is no policy issued to the offending vehicle covering the date of accident is not acceptable.

12.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.1,43,020/- awarded by the Tribunal as compensation to the 1st respondent, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount 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, at the first instance and then recover the same from the 2nd respondent/owner of the vehicle. On such deposit, the 1st respondent being a minor the award amount along with interest and cost is directed to be deposited in any one of the Nationalised Bank till the minor attains majority. The mother of the minor 1st respondent is permitted to withdraw the accrued interest once in three months for the welfare of the minor. No costs. Consequently, connected Miscellaneous Petition is closed.

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-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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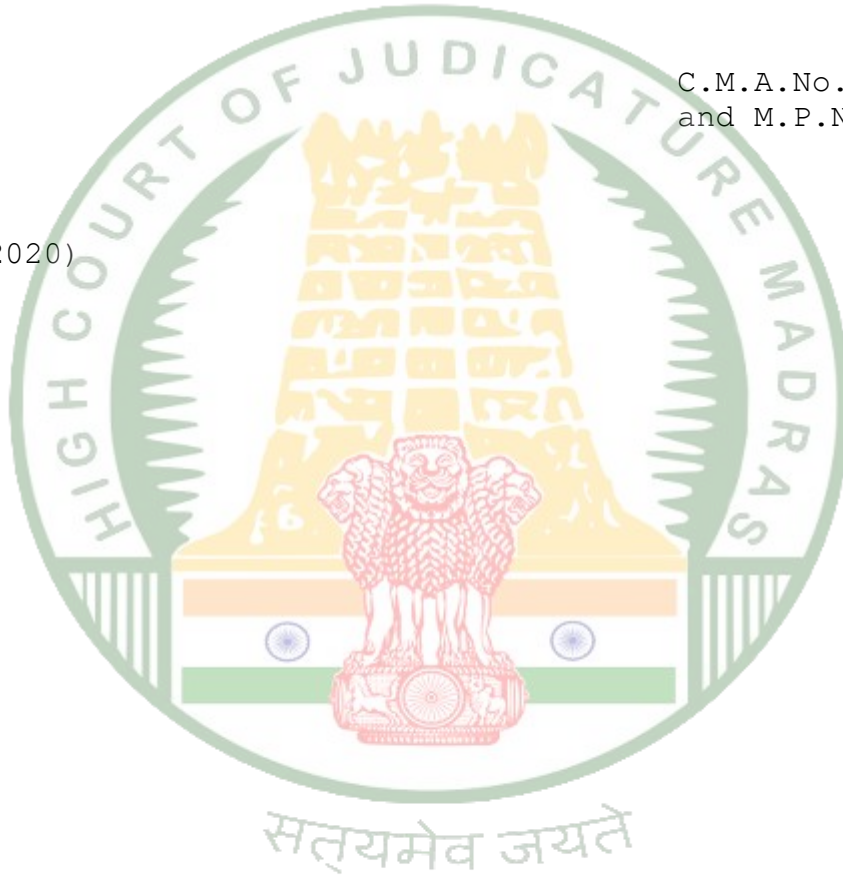
1.The I Additional Subordinate Judge,
Motor Accident Claims Tribunal
Cuddalore.

2.The Section Officer
VR Section
High Court
Madras.

+1 CC to M/s. M.B. Gopalan & Associates sr 6900.

C.M.A.No.428 of 2015
and M.P.No.1 of 2015

KK (CO)
SP (15/12/2020)



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