

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 531 of 2012
and M.P. No. 1 of 2012

The United India Insurance Co. Ltd.,
Branch Office,
Dharmapuri.

.. Appellant/2nd Respondent

Vs.

1.Minor Krishnamoorthy
(rep. By his father and natural
guardian, Madhu)

...1st Respondent/Petitioner

2.The Correspondent,
M.R.G., Matriculation School,
Mathur Village & Post,
Pochampalli Taluk.

.. 2nd Respondent/1st Respondent

(R2 was set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.06.2011, made in M.C.O.P. No. 62 of 2008, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Ms. I. Malar

For Respondents: R1-Not ready in Notice
R2-Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 16.06.2011, made in M.C.O.P. No. 62 of 2008, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant is the 2nd respondent in M.C.O.P. No. 62 of 2008, on the file of the Additional District Court, (Motor

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Accident Claims Tribunal), Krishnagiri. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 19.07.2007.

3. According to the 1st respondent, on the date of accident viz., 19.07.2007, when he was walking on the left side of the road, driver of the Van bearing Registration No. TN-28-U-3434 belonging to the 2nd respondent, drove the vehicle in a rash and negligent manner and dashed against the 1st respondent from behind and caused the accident. The 1st respondent sustained injuries on his right leg and filed the claim petition, claiming compensation against the 2nd respondent and appellant, as owner and insurer of the vehicle respectively.

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company filed counter statement and denied all the averments made by the 1st respondent. According to the appellant, the accident did not occur involving the Van belonging to the 2nd respondent as alleged by the 1st respondent. On the date of accident, the 1st respondent along with other boys were running behind the School Van, which was departing the school students at their respective homes, and fell down on the street and sustained some simple injuries. The appellant denied the age, educational qualifications and injuries sustained by the 1st respondent and prayed for dismissal of the claim petition.

6. Before the Tribunal, on the side of the 1st respondent, one Madhu was examined as P.W.1 and one Doctor was examined as P.W.2 and 6 documents were marked as Exs.P1 to P6. The appellant examined one Sudhanthiraj as R.W.1 and marked 1 document as Ex.R1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Van belonging to the 2nd respondent and directed the appellant as well as the 2nd respondent to jointly and severally pay a sum of Rs.88,000/- as compensation to the 1st respondent.

8. Against the said award dated 16.06.2011, made in M.C.O.P. No. 62 of 2008, the appellant-Insurance Company has come out with the present appeal, questioning the liability fixed on them.

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9.Learned counsel appearing for the appellant-Insurance Company contended that the Tribunal, in the absence of any documentary evidence to show that the accident has occurred due to rash and negligent driving by the driver of the Van belonging to the 2nd respondent, fixed negligence on the part of the driver of the Van and liability on the appellant. The driver of the offending vehicle drove the said vehicle with all care and caution at the time of accident and the accident has occurred only due to own fault of the 1st respondent/minor claimant. The Tribunal ought to have considered the evidence of R.W.1, who deposed that the driver of the vehicle was not responsible for the accident, and Ex.R1 - final report which states that the case was 'mistake of fact'. The Tribunal ought to have awarded compensation under no fault liability and prayed for dismissal of the appeal.

11.Heard learned counsel appearing for the appellant-Insurance Company and perused the materials available on record.

12.From the materials on record, it is seen that the father of the injured 1st respondent/claimant has examined himself as P.W.1 to depose about the manner of accident, which occurred when the minor 1st respondent was walking along the side of the road and the Van belonging to the 2nd respondent, driven by its driver in a rash and negligent manner, dashed against the 1st respondent minor. P.W.1 who was the eye-witness to the accident has marked FIR copy as Ex.P1, to prove his case. R.W.1 has alleged that the said 1st respondent along with other boys ran behind the School Van and fell down on the street and sustained some simple injuries and referred to the final report filed by the Police as Ex.R1, wherein the Police has closed the case as 'mistake of fact'. The appellant did not examine the driver of the Van or any eye-witness to the accident. In the absence of any contra evidence on the side of the appellant to disprove the evidence of P.W.1, the Tribunal held that the accident occurred only due to rash and negligent driving by the driver of the School Van belonging to the 2nd respondent and fixed liability on the appellant as well as the 2nd respondent to pay the compensation jointly and severally. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.For the above reason, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.88,000/- along with interest and costs is confirmed. The appellant as well as the 2nd respondent are directed to deposit the award amount along with interest and costs, within a period of six

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weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 62 of 2008. On such deposit, the award amount is directed to be deposited in any one of the Nationalized Banks, till the minor 1st respondent attains majority. The father of the 1st respondent is permitted to withdraw the accrued interest, once in three months for the welfare of the minor 1st respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gsa

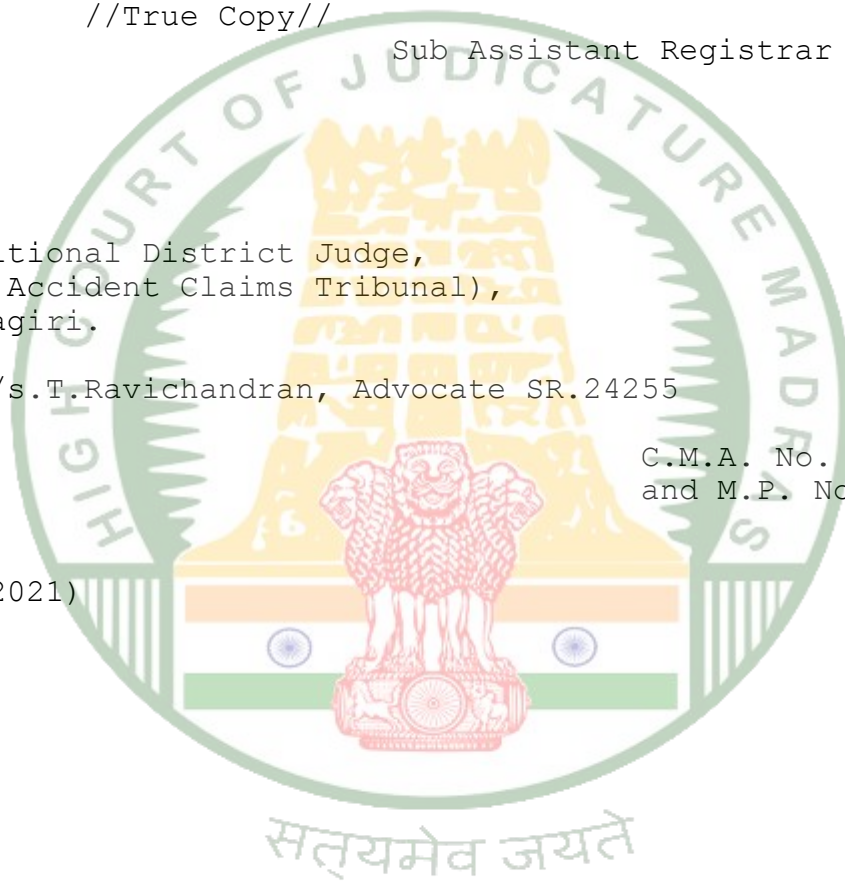
To

1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

+1cc to M/s.T.Ravichandran, Advocate SR.24255

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