

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.771 of 2012

The Divisional Manager,
The National Insurance Company Limited,
Pondicherry.

...Appellant

Vs

1.R.Adhikesavan

2.M/s.Coimbatore Earth
Movers Hiring Divisional
Coimbatore. ...Respondents
(R2- set exparte in lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P.No.2486 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore, dated 28.07.2011.

For Petitioner : Mr.R.Ravichandran

For Respondents: Mr.R.Sreedhar for R1
R2 - Ex-parte

J U D G M E N T

The appellant, who is the Divisional Manager in the National Insurance Company Limited, Pondicherry filed the present appeal under Section 173 of the Motor Vehicle Act, 1988 questioning their liability to pay compensation amount to the claimant and also the quantum of award passed by the tribunal.

2. The claimant/first respondent filed a claim petition in MCOP No.2486 of 2008 before the Principal Sub Judge, Motor Vehicle Accident Claims Tribunal, Cuddalore under Section 166 of the Motor Vehicles Act seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place

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on 30.08.2008.

3. The brief facts of the case are as follows:

On 30.08.2008 at about 06.00 AM, when the first respondent was travelling in the 2nd respondent Bokline as cleaner bearing Registration No.P.C.200 S.No.NL.14354 driven by one Senthilkumar towards Madras Cement Limited M.L.L.Gate, a goat crossed the road and to avert the accident, the driver suddenly turned to right side and thereby the first respondent fell down from the Bokline and sustained grievous injuries. The accident occurred due to the rash and negligent driving of the second respondent.

4. In the trial court, the second respondent, owner of the Bokline remained absent and was set exparte.

5. The Insurance company (2nd respondent)/ appellant resisted the claim petition by filing a counter affidavit before the tribunal.

6. The Motor Accident Claims Tribunal, after analysing the evidence on record, has held that the claimant was travelling in the Bokline and met with an accident and that the insurance company is liable to pay compensation of Rs.1,42,500/- together with interest at the rate of 7.5% per annum.

7. Aggrieved over the order passed by the Tribunal, the National Insurance Company Limited has filed the present appeal contending that the Insurance Company is not liable to pay any compensation to him.

8. The learned counsel appearing for the appellant would submit that the Tribunal has failed to understand that the Insurance Policy that had been taken by the second respondent with the appellant was only for transporting the subject-Bokline Machine as a Cargo from L & T Factory at Bangalore to Coimbatore and that it was not an Insurance Policy covering the subject Bokline Machine as a Motor Vehicle as per the requirements of Section 147 of Motor Vehicle Act, 1988. The learned Tribunal has not at all appreciated and understood Ex.P6 and Ex.R.1 (Insurance Policy that has been issued by the appellant in respect of the subject Bokline Machine) in proper perspective and that it has resulted in miscarriage of justice. The contents of Ex.P6/Ex.R1 themselves should have made it clear to the Tribunal that the subject policy was only meant to insure a commodity/cargo, while it was being transported from one place to another. The clauses found in Ex.R.1 captioned as "Inland Transit (Rail or Road) Clause-A" should also have abundantly made it clear to the Tribunal that the subject-policy was only a

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Cargo Policy. The learned Tribunal had perused all the above mentioned clause in Ex.P6/ Ex.R.1, then the learned Tribunal would have readily understood and appreciated that the subject-policy was taken only for covering the Bokline Machine as a Motor Vehicle so as to meet the requirements of Sec.147 of the M.V.Act. In the above facts and circumstances, the learned Tribunal should have exonerated the appellant from payment of compensation in this matter. The learned Tribunal should have held that the appellant could not be made liable to pay compensation in this matter. Without prejudice, the award passed by the Tribunal is also on the higher side. Hence, the learned counsel for the appellant prays to allow this appeal.

9. The learned counsel appearing for the first respondent would submit that Insurance Company/appellant herein, being the insurer of the Bokeline, is liable to pay the compensation to the claimant. Hence, the learned counsel for the first respondent prays to dismiss this appeal filed by the National Insurance Company Limited.

10. Heard the learned counsel on either side and perused the materials available on record.

11. Taking into consideration the facts and circumstances of the case, this Court is of the view that the Tribunal ought to have rejected the claim petition to fix the liability on the Insurance Company, on the ground that the policy conditions do not cover such kind of incidents and the compensation of Rs.1,42,500 awarded by the Tribunal to the claimant fixing the liability on the Insurance Company is not proper. Therefore, only the owner of the Bokeline is liable to pay compensation to the claimant for violating the policy conditions. The appellant/Insurance Company is hereby directed to pay the compensation to the claimant and recover the same from the owner of the Bokeline in accordance with law.

12. In the result, the Civil Miscellaneous Appeal is allowed and the appellant-Insurance Company shall proceed against the owner of the Bokeline/2nd respondent herein in accordance with law. The Judgement and Decree of the Tribunal remains unaltered in other respects. No costs.

Sd/-

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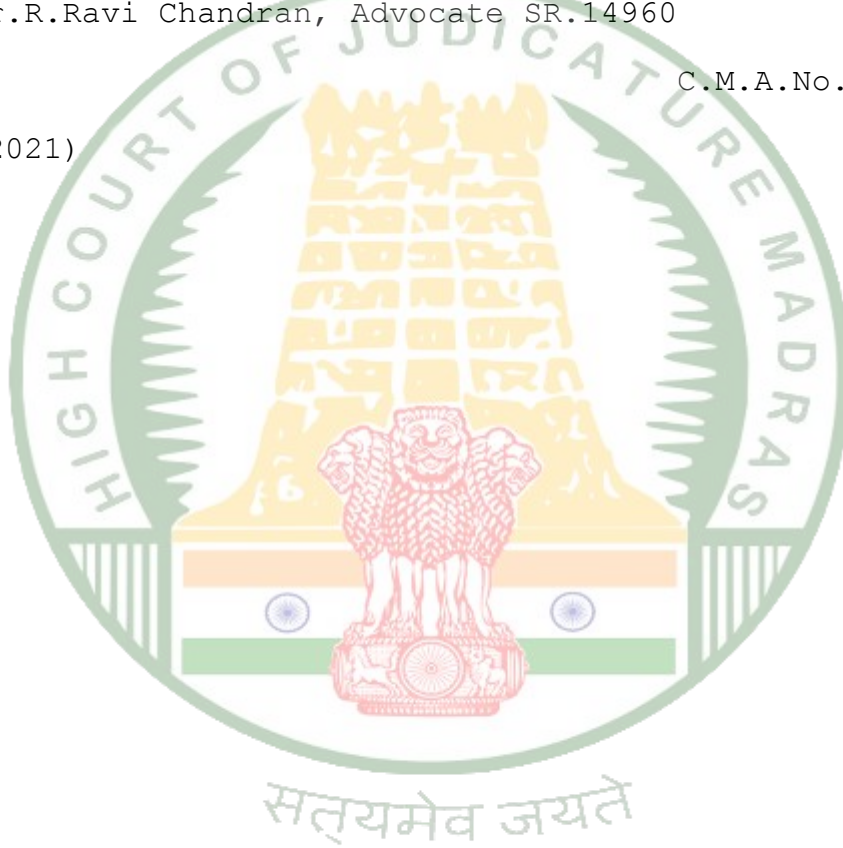
1.The Motor Accident Claims Tribunal,
The Principal Subordinate Judge, Cuddalore.

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