

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.395 of 2013

Arul Pathinathan

...Appellant/Claimant

Versus

1. Malar Trust rep. By its
Managing Trustee
Pattathur,
Sankaran Koil Taluk.

2. National Insurance Company
Limited
by its Divisional Manager,
37 C.S.N. High Road,
Opposite to Head Post office,
Tirunelveli Junction.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2011 made in MCOP No.262 of 2009 on the file of the Motor Accident Claims Tribunal (Sub Court, Mayiladuthurai).

For Appellant : Ms.M.Kavitha
for M/s.S. Sounthar

For Respondents : Mr. S. Vadivel for R2
R1 - Left
Exparte

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant challenging the impugned award dated 30.11.2011 passed by the Motor Accidents Claims Tribunal, (Sub Court, Mayiladuthurai) in MCOP No.262 of 2007, exonerating the liability of the second respondent from payment of compensation to the appellant / claimant.

2. The appellant / claimant sustained injuries as a result of an accident on 26.07.2007 between two Motorcycles bearing Registration No.TN-72-D-6206 (Hero Honda) and TN-51-U-2899 (TVS Super XL). The appellant / claimant was the rider of the motor cycle bearing Registration No.TN-72-D-6206 and the said vehicle

is owned by the first respondent and insured with the second respondent.

3. Before the Tribunal the second respondent /Insurance Company has taken a consistent stand, as seen from the counter statement as well as the evidence available on record that the cause of the accident even as per the appellant's / claimant's own statement is the rider of the motor cycle bearing Registration No.TN-51-U-2899 and hence, they are not liable to compensate the claimant, since he is not a third party.

4. Before the Tribunal, the appellant / claimant has filed 11 documents, which were marked as Ex.P1 to P11 and two witnesses were examined on his side viz., the appellant himself as PW1 and his Doctor who examined him as PW2. On the side of the second respondent / Insurance Company, two documents were filed, which includes the accident investigation report as well as the insurance policy and they have also examined one witness on their side viz., RW1.

5. As seen from the FIR(Ex.P1), which has been duly considered by the Tribunal under the impugned award, the offending vehicle is the motor cycle bearing Registration No.TN-51-U-2899 and not the motor cycle bearing Registration No.TN-72-D-6206 insured with the second respondent. It is also admitted by the appellant / claimant that the motor cycle bearing Registration No.TN-72-D-6206 was borrowed by him from the first respondent and he was the rider of the said two wheeler which collided with the offending two wheeler bearing Registration No.TN-51-U-2899. The second respondent in their counter statement as well as in their evidence adduced before the Tribunal have consistently contended that the appellant / claimant is not a third party to the second respondent / Insurance Company and therefore, they are no way responsible for the claim of the appellant / claimant.

6. The Tribunal as seen from the impugned award has taken into consideration all the aforementioned factors and has rightly come to the conclusion that the appellant / claimant has taken inconsistent stand and the FIR(Ex.P1) which has not been rebutted by any contra evidence also prove that the offending vehicle is only the Motorcycle bearing registration No.TN-51-U-2899 and not the motor cycle bearing Registration No. TN-D-6206. Since, the second respondent/ Insurance company is no way connected with the Motorcycle bearing Registration No.TN-51-U-2899, the Tribunal has rightly exonerated the second respondent / Insurance Company from any liability for the payment of compensation to the appellant and has also rightly dismissed the claim of the appellant / claimant against both the respondents.

7. For the foregoing reasons this Court does not find any infirmity or perversity in the finding of the Tribunal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs.

-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vsi2

To

1.The Subordinate Judge
Motor Accident Claims Tribunal
Mayiladuthurai.

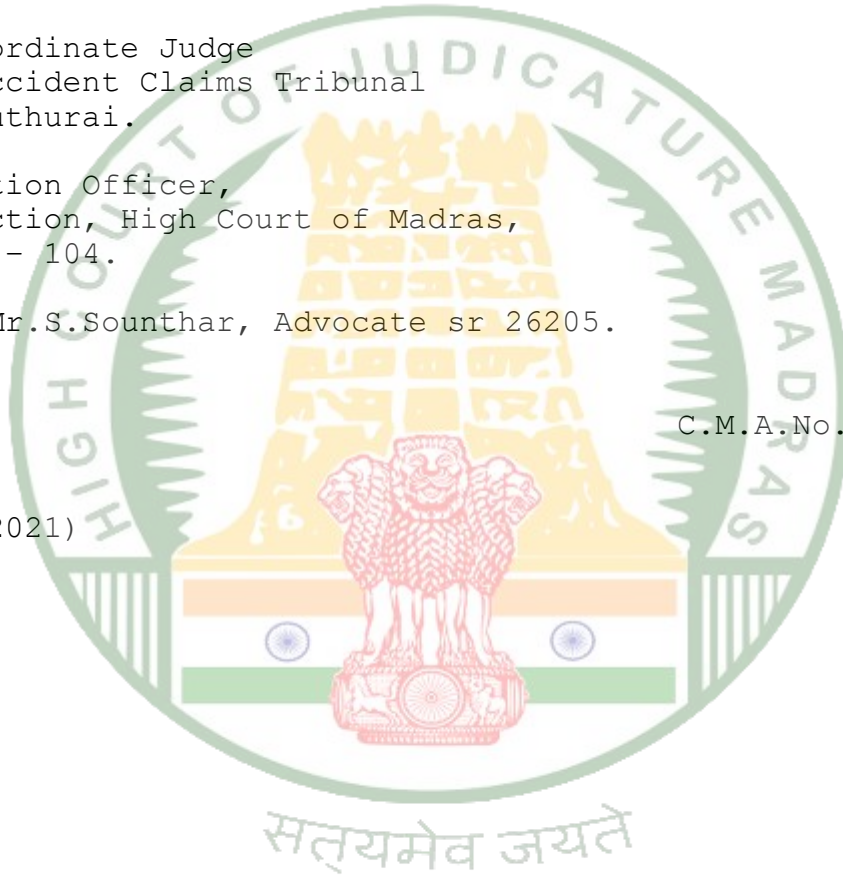
2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+1 CC to Mr.S.Sounthar, Advocate sr 26205.

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SV(CO)

SP(26/04/2021)



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