

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1141 of 2014

The Divisional Manager

United Indian Insurance Co. Ltd.,

Pondicherry.

... Appellant/2nd Respondent

Vs

1. Kuzhandaivelu

...1st Respondent/ Petitioner

2. J.Jayadevi

... Respondent/1st Respondent

(R2 set Exparte before the Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 23.10.2013 made in MCOP.No.1541 of 2004, on the file of the Motor Accident Claims Tribunal (II Additional District Judge-Presiding Officer) Puducherry.

For appellant : Mr.J.Chandran

For respondents : Mr.M.Devaraj - R1

R2 - Ex-parte

J U D G M E N T

This appeal has been filed by the appellant/insurance company challenging the impugned award dated 23.10.2013 passed by the Motor Accident Claims Tribunal, (II Additional District Court) Puducherry in MCOP. No.1541 of 2004.

2. The only contention raised by the appellant/Insurance Company in this appeal is that the Tribunal, by total non application of mind, under the impugned award, has mulcted the liability on them, even though in the claim petitions involving the same accident, the Tribunal in MCOP. Nos.1456 of 2003 and 241 of 2004 had held that Royal Sundaram Alliance Insurance Company Ltd., Puducherry, is alone liable to compensate the claim since it was only the vehicle viz., TVS XL Super bearing Registration No.PY 01 V 8437, which was insured by them, was responsible for the cause of accident. According to the appellant, that award passed in MCOP. Nos.1456 of 2003 and 241 of 2004, dated 22.04.2010, were marked as Ex.R2 and Ex.R3 before the Tribunal. However, the Tribunal, by total non application of mind, has held that the appellant/Insurance Company is liable, who is the insurer for the Hero Honda Motor-cycle bearing Registration No.PY 01 U 2644, which was also involved in the accident along with the motor-cycle viz., TVS XL Super bearing Registration No. PY 01 U 8437.

3. Heard Mr.J.Chandran, learned counsel for the appellant, Mr.M.Devaraj, learned counsel for the first respondent. Since the second respondent, who is the owner of the insured vehicle remained ex-parte before the Tribunal, notice to the second respondent is dispensed with by this Court.

4. This Court has perused and examined the impugned award as well as Exs.R2 and R3 marked before the Tribunal in MCOP. Nos.1541 of 2004, which is the subject matter of this appeal. The claimants in MCOP. Nos.1456 of 2003 and 241 of 2004 were also travelling in the motor-cycle, which is insured with the appellant. They had also preferred separate claims along with the first respondent before the Motor Accident Claims Tribunal in MCOP. Nos.1456 of 2004, 1541 of 2003 and 241 of 2004 and award has already been passed by the Tribunal, as seen from Ex.R2 and Ex.R3. As per the said award, the appellant/Insurance company, who are the insurers of the motor-cycle viz., Hero Honda bearing Registration No.PY 01 U 2644 has been exonerated from any liability. The Tribunal, based on the evidence available on record, has held that it is only the motor-cycle viz., TVS XL super bearing Registration No. PY 01 V 8437, which is responsible for the cause of the accident. However, the Tribunal, under the impugned award dated 23.10.2013, which is subsequent to the awards passed in MCOP. Nos.1456 of 2003 and 241 of 2004, both dated 23.04.2010, without any application of mind and without giving any reason, as to why the award stated 22.04.2010 passed in MCOP. Nos.1456 of 2003 and 241 of 2004 are not binding on it, has passed an award making the appellant / Insurance company, who is the insurer of Hero Honda bearing Registration No.PY 01 U 2644, liable to compensate the claim of the first respondent.

Since, Royal Sundaram Alliance Insurance Company Ltd., Puducherry, who are made liable under the earlier awards both dated 22.04.2010 passed in MCOP. No.1456 of 2003 and 241 of 2004, is not a party to this appeal, any adverse order making it liable to pay the compensation to the first respondent, cannot be passed by this Court in their absence. The only re-course now available to this Court is to remand the matter back to the Tribunal for fresh consideration. Without going into the merits of the matter and only on the basis that the Tribunal, under the impugned award, has not applied its mind to Exs.R2 and R3 viz., the awards passed in MCOP. Nos.1456 of 2003 and 241 of 2004, the matter is remanded back to the Tribunal for fresh consideration. The appellant and the respondents are permitted to let in additional evidence before the Tribunal and also file appropriate application to implead M/s.Royal Sundaram Alliance Insurance Co. Ltd., which is a necessary party for the effective adjudication of the claim.

5. Accordingly, the impugned judgment and decree dated 23.10.2013 passed in MCOP. No.1541 of 2004 by the Motor Accident Claims Tribunal, Puducherry, is hereby set-aside and the matter is remanded back to the same Tribunal for fresh consideration.

6. Both the appellant as well as the respondents are permitted to let in additional evidence and they are also permitted to file appropriate application to implead M/s.Royal Sundaram Alliance Insurance Co. Ltd., who is a necessary party for the effective adjudication of the dispute.

7. The Tribunal is further directed to pass an order on merits, taking into account the case pleaded by the respective parties. Such exercise shall be completed within a period of six months from the date of receipt of a copy of this judgment.

8. In the result, this Civil Miscellaneous Appeal is disposed of. There is no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rli
To

The II Additional District Judge-Presiding Officer,
Motor accident Claims Tribunal
Puducherry.

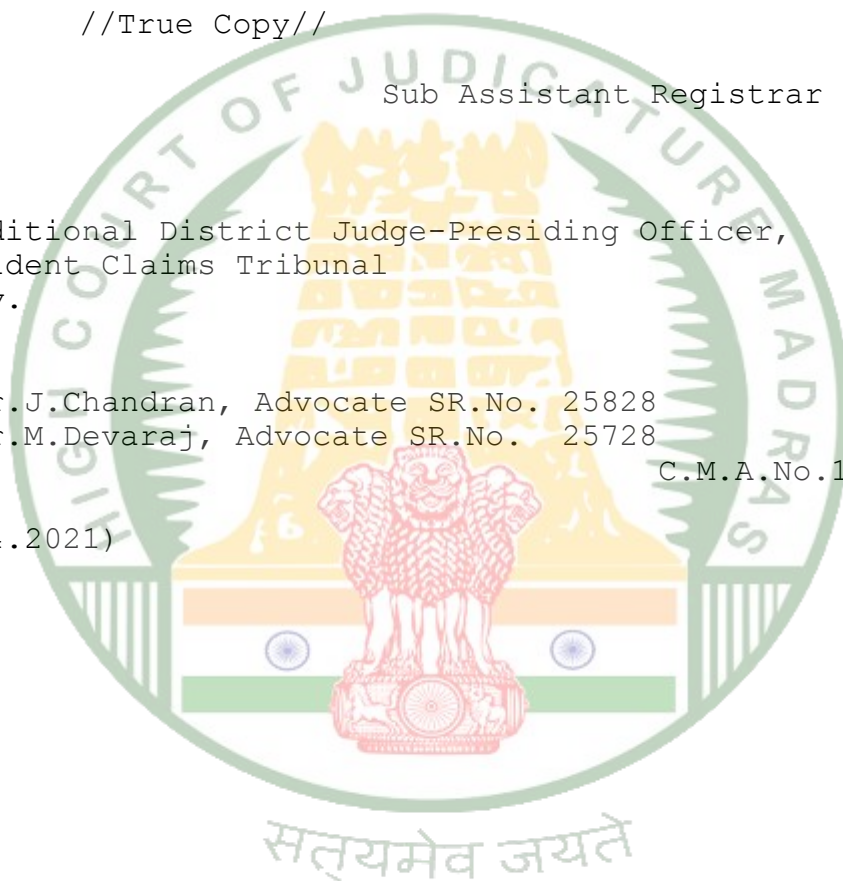
+1cc to Mr.J.Chandran, Advocate SR.No. 25828

+1cc to Mr.M.Devaraj, Advocate SR.No. 25728

C.M.A.No.1141 of 2014

KJ CO

A.SK(28.04.2021)



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