

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.571 of 2014

National Insurance Company Ltd.,
Villupuram. ... Appellant /Respondent

Vs.

Mr.Stalin ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree passed in M.C.O.P.No.173 of 2008, dated 31.10.2012 The Motor Accident Claims Tribunal (II Additional Subordinate - Judge) Villupuram-District and be pleased to dismiss the claim.

For Appellant : Mr.J.Chandran

For Respondent : No Appearance

J U D G M E N T

This appeal is preferred by the appellant as against the award passed by the Tribunal in M.C.O.P.No.173 of 2008.

2.In respect of an accident that took place on 17.05.2007 at about 12.30 hours, the respondent was travelled with some iron pipes on his own vehicle along with his driver from Villuppuram to Kooteripattu for purpose of his own stainless steel and Aluminium factory. When the vehicle nearing vilangampady, the driver of the vehicle drove the vehicle in a rash and negligent manner and capsized the vehicle. Due to the said accident the respondent sustained grievous injuries. He filed a claim petition for a sum of Rs.5,00,000/- as total compensation.

3.The Tribunal, based on the witnesses and documents available on record, has fastened the liability on the appellant herein and arrived at the quantum of compensation at Rs.1,66,616/-, challenging the same the appellant herein has preferred this appeal.

4. The learned counsel for the appellant / insurance company submitted that the Tribunal, though has analysed the documents, has fastened the liability on the appellant herein, However, the fact remains that the respondent herein / Claimant is also responsible for the accident. He further submitted that the vehicle is a goods vehicle, the petitioner has travelled in the said vehicle as an unauthorized passenger and violated the insurance policy conditions. He further submitted in any event, an award passed by the Tribunal at Rs.1,66,616/- is excessive.

5. At this stage, the learned counsel for the appellant would contend that no additional premium has been paid by the owner/ respondent to cover "Owner's risk" also. Since such specific pleadings has not been raised by the appellant in his counter, the Tribunal proceeded to award compensation, which needs interference in the hands of this Court he pleaded.

6. The learned counsel for the appellant contended that the accident occurred solely due to rash and negligent driving of the respondent's driver and also contended that the Tribunal considered the object of provisions under sections 147, 165 and 166 of MV Act, and the same is only to safeguard the interest of 3rd party claimants or employees and nowhere statutorily it is included that owner of the vehicle is entitled to the benefits. The owner of the vehicle cannot be construed as 3rd party and the vicarious liability will arise only after the owner of the vehicle was impleaded. Therefore, he prays to set aside the order passed by the Tribunal.

7. Heard the learned counsel for the appellant and perused the documents placed on record. Though, notice was ordered on 17.02.2014, there is no representation for the respondent.

8. Before the Tribunal on the side of the respondent, he was examined himself as P.W.1 and Doctor was examined as P.W.2. Exs.P1 to P11 have been marked. On the side of the appellant, neither witness was examined, nor exhibits were marked. The respondent/PW1 is the injured. Due to the rash and negligent driving of his driver, the vehicle capsized down and he sustained grievous injuries. Ex.P1-F.I.R., Ex-2 wound certificate shows that he sustained injuries due to the accident. Ex-P3 MVI report shows that the said vehicle is involved in the accident, Ex-4 is the valid driving licence. Ex.P6 Registration certificate shows that the respondent is owner of the said vehicle. Ex.P5 shows that it has been insured with the respondent. Though the respondent has claimed that his driven had driven the vehicle in a rash and negligent manner and caused accident, he has neither chosen to examine him as witness, nor added as a party to the proceedings. At the same

time, the appellant has not made any serious objection in this regard. Hence, it is held that the accident is caused due to the rash and negligent driving of the respondent's driver.

9. Further, the Tribunal has awarded Rs.76,616/- towards medical expenses, Rs.15,000/- towards extra nourishment, Rs.15,000/- for attender charges and Rs.25,000/- towards pain and sufferings further Tribunal has awarded Rs.35,000/- towards disability. The Tribunal has awarded a sum of Rs.1,66,616/- with interest at the rate of 7.5 per cent from 25.02.2008 till 06.03.2013 was Rs.62,893/- and the total value of appeal was Rs.2,29,509/-.

10. This court finds some force in the submission of learned counsel for the appellant. On the perusal of Ex.P.5, Insurance policy. It is seen that there is no coverage for the owner of the vehicle, as it is a B-package policy and hence, the respondent is not entitled to receive any compensation for the accident occurred. In the absence of any material evidence, the Court below just presented the said contention of the insurance company and stating that the same has not been pleaded in the counter itself had proceeded to fix the liability on the appellant and awarded compensation. The respondent has violated policy conditions and the same can be brought to the knowledge of the court at any time. The Court below in the considered opinion of this Court has erroneously awarded a compensation of Rs.1,66,616/-, for which the owner of the said vehicle is not entitled.

11. In the result, the Civil Miscellaneous Appeal filed by the appellant is allowed and the order passed by the Court below in M.C.O.P No.173 of 2008, dated 31.10.2012 is set aside. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

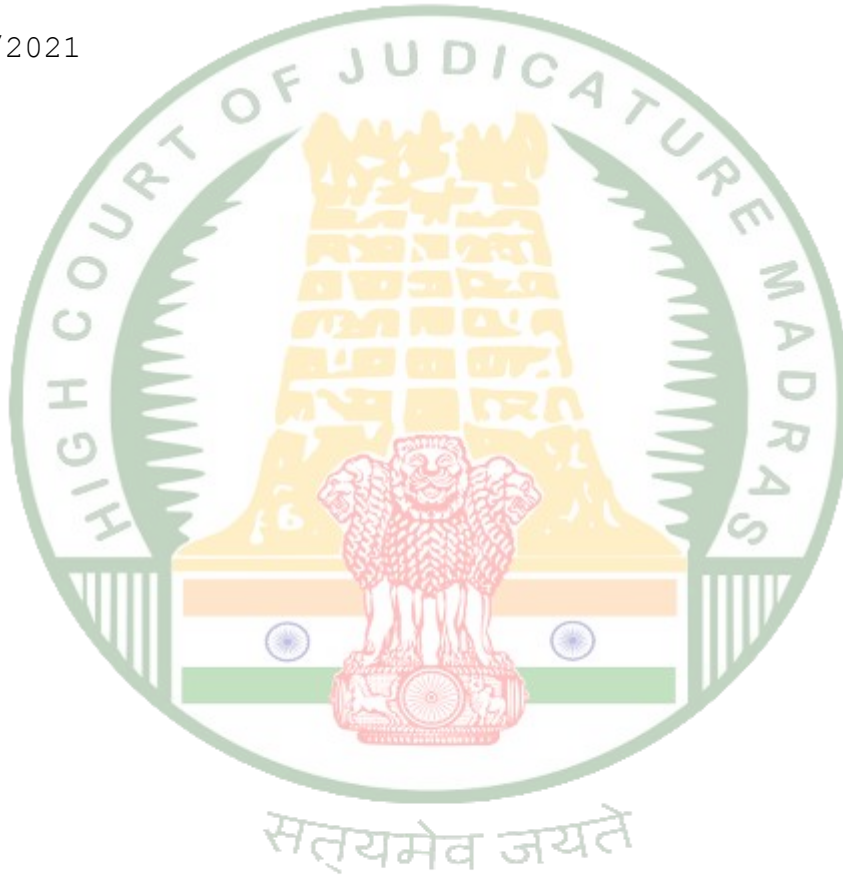
1.The II Additional Subordinate - Judge
Motor Accidents Claims Tribunal,
Villupuram-District.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate Sr.14723

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