

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1492 of 2017

M/s.United India Insurance Company Ltd.,
Rep by its Manager,
Silingi Building,
No.134, Greames Road,
Chennai - 600 006.

... Appellant/2nd Respondent

Vs.

1.M.Dhanapal

2.Imthiaz ... Respondent/ Petitioner/1st Respondent
(Second Respondent remained ex parte in the lower court)

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 04.02.2015 made in MACTOP No.939 of 2013, on the file of the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Ms.R.Rathna Thara

For Respondents: No appearance -R1

JUDGMENT

This appeal is preferred by the appellant/Insurance Company as against the award passed by the Tribunal on 04.02.2015 in MACTOP No.939 of 2013.

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

On 23.05.2012, at about 11.00 a.m., when the first respondent/ claimant was walking on the extreme left side of Gandhi Road, Kanchipuram, the 2nd respondent's motorcycle bearing Registration No. TN 18 H 9686 which was driven by its driver in a rash and negligent manner, dashed against the claimant, as a result of which, the claimant sustained grievous injuries all over the body. Claiming that the 2nd respondent is the owner of the motorcycle and the appellant being the insurer of the said vehicle and vicariously liable to pay compensation, the first respondent/claimant filed a claim petition before the Tribunal claiming a sum of Rs.3,00,000/- as compensation.

3.The appellant/Insurance Company denied the allegations made by the 1st respondent in the counter

filed before the Tribunal. The appellant denied that the rider of the vehicle bearing Registration No.TN 18 H 9686 was not insured with the appellant/Insurance Company and the rider had no driving licence at the time of accident. Hence, the appellant/Insurance Company is not liable to pay compensation to the 1st respondent.

4.The 2nd respondent /owner of the vehicle remained ex parte before the Tribunal.

5.The Tribunal based on the evidence of P.W.1, Ex.P1/FIR and Ex.P5/charge sheet, fixed the negligence on the rider of the motorcycle and arrived at the quantum of Rs.6,34,900/- with interest at the rate of 7.5% per annum from the date of petition, payable by the appellant herein.

6.The appellant/Insurance Company filed petition vide M.P.No.1823 of 2015 before the Tribunal seeking to recall the judgment and decree dated 04.02.2015, on the ground that there was a misrepresentation in respect of the vehicle involved in the accident. The said petition came to be dismissed by the Tribunal by observing that the appellant has to seek remedy before the appellate forum.

7.The learned counsel appearing for the appellant has submitted that the compensation awarded by the Tribunal at Rs.6,34,900/- is excessive and exorbitant. He further submitted that the Registration Number of the vehicle mentioned in Ex.P1/FIR is TN 21 H 1401 whereas, in the copy of Ex.P5/charge sheet, the Registration Number of the motorcycle involved in the accident has been shown as TN 18 H 9686 and hence there is a misrepresentation on the part of the claimant in respect of the vehicle involved in the accident.

8.This Court has considered the said statement made by the learned counsel appearing for the appellant and perused the materials available on record.

9.Admittedly, there is no eyewitness to the accident. From the materials available on record, it is seen that the two wheeler number is varying in Ex.P1/FIR and Ex.P5/charge sheet. Ex.P1/FIR was filed only on the next day of accident and charge sheet was framed only after a period of four months from the date of accident. In this connection, the Tribunal has observed in its order dated 08.10.2015 passed in the petition filed by the Insurance Company to recall the award passed on 04.02.2015, as follows:

"7.The petitioner who is the Insurance Company of the above vehicle now after passing of the award has come forward with the new

fact that the vehicle bearing Regn.No.TN-18-H9686 is not responsible for this accident and actually a vehicle bearing Regn.No.TN-21-H-1401 alone is responsible for the accident. Therefore the award passed by the tribunal on the basis of involvement of vehicle bearing Regn.No.TN-18-H-9686 is liable to be recalled. For that, the petitioner is basing the report of one Narayanasamy who initially gave the report before the concerned Police. The respondent herein also accepted the report of Narayanasamy about the mentioning of vehicle TN-21-H-1401 has stated that the owner of the vehicle bearing Regn.No.TN-18-H-9686 in order to avoid his liability has given a false vehicle number and I.O who has investigated the report has filed a charge sheet regarding the involvement of vehicle TN-18-H-9686. The charge sheet has been filed by the IO after thorough investigation. If at all as stated by the petitioner the vehicle bearing Regn.No.TN-21-1401 alone is responsible means it is the duty on the part of the petitioner herein to enlighten before the tribunal at the time of respondent's evidence. Having, failed to do so after passing of the award without any substantial materials in support of his contention has filed a petition to recall the award is not at all maintainable. Once an award is passed the remedy available to the insurance company is to prefer appeal only."

10.Even though the Tribunal has observed that the Insurance Company, after passing of the award, has come forward with the new fact that the vehicle bearing Reg.No.TN-18-H-9686 is not responsible for this accident and actually a vehicle bearing Reg.No.TN-21-H-1401 alone is responsible and that it is the duty on the part of the Insurance Company to enlighten before the Tribunal about the correct vehicle number at the time of giving evidence on the side of the claimant, the said stand taken by the Tribunal cannot be accepted for the reason that the case was endorsed for being investigation and the final report was received only after the judgment was passed and in that circumstance, evidence could not be let in by the appellant. Hence, the appellant was not at all fault by not producing substantial evidence before the Tribunal.

11.For the above reason, the award of the Tribunal dated 04.02.2015 made in MACTOP No.939 of 2013 is set aside. The Civil Miscellaneous Appeal is allowed and the

matter is remanded back to the Tribunal for fresh consideration. It is open to the parties to let in any further evidence, if they desire so. No costs.

Sd/-
Assistant Registrar(CS IX)
//True Copy//

Sub Assistant Registrar

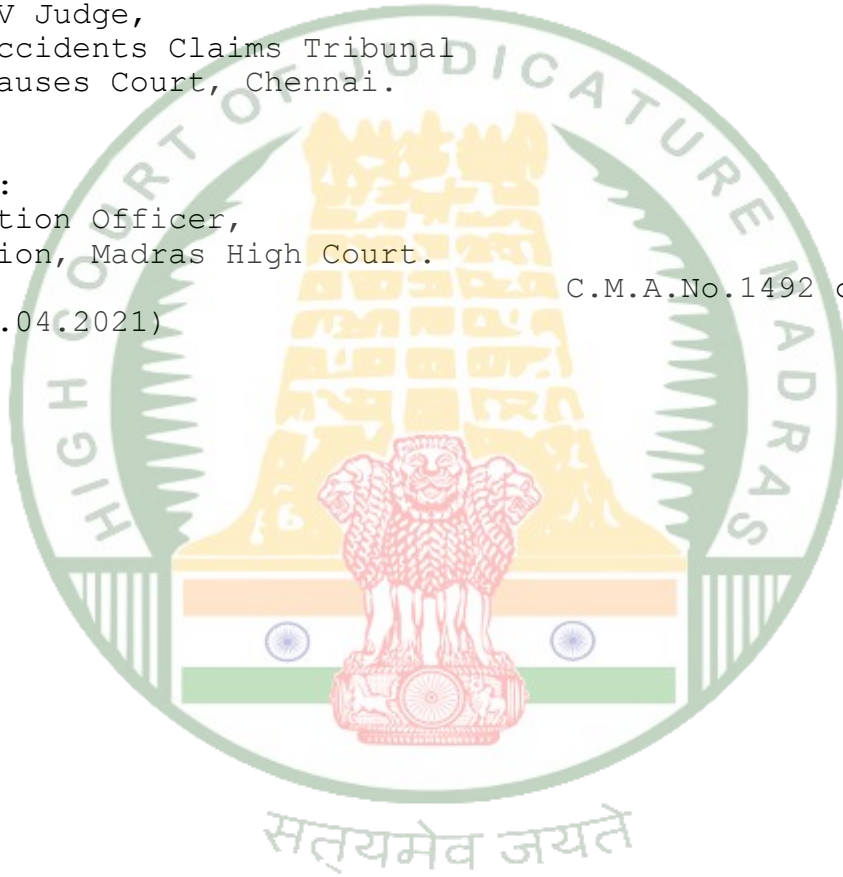
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To

1.The IV Judge,
Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

Copy to:
The Section Officer,
VR Section, Madras High Court.

C.M.A.No.1492 of 2017

A.SK(30.04.2021)



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