



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 25.11.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD) .Nos.398 and 399 of 2017
and
C.M.P. (MD)Nos. 4320 and 4321 of 2017

C.M.A. (MD)No.398 of 2017

The Regional Manager,
The Oriental Insurance Company Ltd.,
59, Raja Street,
Gopichettipalayam
Erode District.

...Appellant/Respondent No.3

Vs.

1.Rajkumar

... 1st Respondent/Petitioner

*(R1 is declared as major and the guardianship
as discharged, vide Court order dated
03.07.2018 made in C.M.P.No.3306 of 2018)*

2.G.Srinivasan

... 2nd Respondent/1st Respondent

3.P.Kaliannan

... 3rd Respondent/2nd Respondent

PRAYER in C.M.A. (MD)No.398 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.459 of 2010 dated 07.11.2014 on the file of the Motor Accident Claims Tribunal, Sub-Court, Kulithalai.

C.M.A. (MD)No.399 of 2017

The Regional Manager,
The Oriental Insurance Company Ltd.,
59, Raja Street,
Gopichettipalayam
Erode District.

...Appellant/RespondentNo.3

Vs.



1.Devanand
2.G.Srinivasan
3.P.Kaliannan

... Petitioner
... 2nd Respondent/1st Respondent
...3rd Respondent/2nd Respondent

PRAYER in C.M.A. (MD)No.399 of 2017 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.460 of 2010, dated 07.11.2014 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai.

For Appellant in
both cases :Mr.C.Jawahar Ravindran
for Mr.C.Ramachandran

For R1 in
both cases :Mr.N.Sudhagar Nagaraj

COMMON ORDER

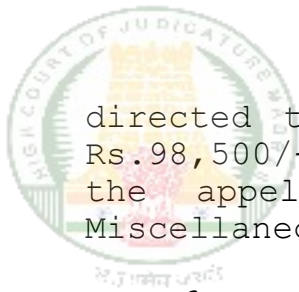
Both the Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company, to set aside the common order, dated 07.11.2014 in M.C.O.P.Nos.460 and 459 passed by the Motor Accident Claims Tribunal, Sub Court, Tirunelveli.

2.It is a case of accident, which took place on 27.08.2010 at about 11.00 a.m., when the claimant in M.C.O.P.No.460 of 2010 was a rider of the two wheeler and the claimant in M.C.O.P.No.459 of 2010 was the pillion rider of the two wheeler bearing Registration No.TN-57-H 1283 while they came from Rediapatti bus stand, a lorry bearing Registration No.TN-67-Q 4433 came from the opposite direction driven by its driver in a rash and negligent manner and dashed against them and as a result of which, both the claimants fell down on the road and sustained injuries.

3.Both the claimant have filed petition in M.C.O.P.Nos.460 and 459 of 2010 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai, seeking compensation.

4.Before the Tribunal, on the side of the claimants, four witnesses were examined as P.Ws.1 to 4 and eleven documents were marked as Exs.P.1 to P.11 and on the side of the respondent two witnesses were examined as R.W.1 and R.W.2 and three documents were marked as Ex.R.1 to Ex.R.3.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced by the counsel for the claimants and the respondent and also on appreciating the evidence on record, held that the accident was occurred only due to the rash and negligent driving of the driver of the lorry and



directed the Insurance Company to pay sum of Rs.1,01,600/- and Rs.98,500/- respectively as compensation. Aggrieved over the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeals.

6.Heard Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant and Mr.N.Sudhagar Nagaraj, learned counsel appearing for the first respondent and perused the material documents available on record.

7.The learned counsel appearing for the appellant/Insurance Company submitted that at the time of accident, the lorry which was involved in the alleged accident dose not contain any valid permit and hence, the Tribunal ought to have ordered "pay and recovery". He further submitted that the Regional Transport Officer(RTO), who was examined as R.W.1, stated that there was no permit in the vehicle, which involved in the accident and the said document was marked as Ex.R.2. Therefore, the appellant/Insurance Company clearly proved that at the time of accident no valid permit is available in the vehicle, which was insured with the appellant Insurance Company. Without considering the evidence of R.W.1 and the material evidence of Ex.R.2, the Tribunal has erroneously fixed the liability on the appellant/Insurance Company to pay compensation. Hence, he prays for allowing the both C.M.As.

8.It is seen from the records that the owner of the vehicle was set ex-parte before the Tribunal and no steps have been taken to set aside the said ex-parte order. Since the owner of the vehicle is liable to pay compensation, the Insurance Company is directed to pay the compensation at the first instance and is at liberty to recover the same from the owner of the vehicle.

9.In view of the above, the Civil Miscellaneous appeals are allowed and the order is modified to the effect that the appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, with liberty to recover the same from the owner of the vehicle. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

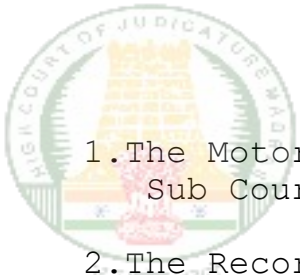
Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

Ns



1.The Motor Accident Claims Tribunal/
Sub Court, Kulithalai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.N. SUDHAGAR NAGARAJ, Advocate (SR-36008[F] dated
26/11/2021)

C.M.A.(MD).Nos.398 and 399 of 2017 and
C.M.P.(MD)Nos. 4320 and 4321 of 2017

25.11.2021

RD(7.01.2022) 4P 5C