

In THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**
AND
THE HONOURABLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2309 of 2018
and
C.M.P.No.17641 of 2018

The Oriental Insurance Company Limited,
Kumbakonam rep. by its
Divisional Manager,
1st Floor, Gopal Rao Library Building,
Town Hall Road, Kumbakonam. Appellant

Vs.

Thirugnanasambandam Respondent

Appeal filed under Section 173 of Motor Vehicles Act,1988
against the award dated 25.01.2018 passed in M.A.C.T.O.P.No.160 of
2016 on the file of the Motor Accidents Claims Tribunal (Subordinate
Judge), Karaikal.

सत्यमेव जयते

For Appellant : Mr.R.Sivakumar

For Respondent : Mr.T.Saikrishnan

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JUDGMENT

(Delivered by *M.M.SUNDRESH.,J*)

This is one of the similar cases we have seen in dealing with the compensation sought for pursuant to the accident occurred. As we find that the Tribunals are committing the same error over and again, we deem it appropriate to pass this order so that the Tribunals across the State of Tamil Nadu and Puducherry would not repeat the same mistakes that are being committed.

2.The vehicle in question bearing Regn. No.TN 68 Q 8067 is a two wheeler, which has been registered in the name of the wife of the respondent/claimant. The policy concerned is a owner cum driver policy. The case of the respondent himself is that he was riding the two wheeler. An F.I.R. has been given by the wife of the respondent in Crime No.8 of 2016 dated 04.02.2016 stating that the vehicle bearing Regn. No.PY 01 AR 9355 was responsible for the accident. This vehicle appears to be an uninsured one.

3.Under those circumstances, the respondent/claimant, without impleading either the driver or owner of the aforesaid vehicle, which has not been insured, made a claim seeking compensation with the appellant alone as the respondent. This is on the premise that the wife

of the respondent being the owner of the two wheeler driven by him has got the vehicle insured with the appellant. The Tribunal accordingly fixed the negligence on the part of the respondent and thereafter fastened the liability on the appellant.

4.As rightly submitted by the learned counsel appearing for the appellant, this is nothing but an attempt to receive payment of compensation. Any payment of compensation should be in accordance with law. Merely because the vehicle driven or owned by a tort-feasor is not insured, the same can never be absolved or not liable to be arrayed as a party respondent while it is open to the owner or the driver of the vehicle to take a plea that it is the vehicle driven or used by the claimant for travelling is responsible.

5. The mere fact that the other vehicle is not insured, *ipso facto* cannot be a ground to avoid being added as a party respondent. The aforesaid procedure that is being adopted with the approval of the Court cannot be sustained in the eye of law. After all, the duty of the Tribunal is to find out the negligence and the liability followed by awarding just compensation.

6. In such view of the matter, we are inclined to set aside the award passed leaving all the issues open with liberty to the respondent to implead the driver or owner of the two wheeler which was said to be responsible for the accident. Accordingly, the Civil Miscellaneous Appeal is allowed and the matter is remitted to the Tribunal for fresh consideration. No costs. Consequently, connected miscellaneous petition is closed.

7. The Tribunal shall consider the entire aspects on their own merits without being influenced by any of the observations made by us in this appeal and also by it while awarding compensation.

8. It is also not proper for the claimant to pick and choose the vehicle involved in the accident and its Insurer and it is only for the Court to fix the negligence and liability and to award compensation accordingly. In the absence of impleading all the parties involved in the accident, particularly, the owner of the offending vehicle and its insurer and without hearing the submissions of those parties, it is difficult for the Tribunal to determine the negligence and to fix the liability. In some case, we have come across that due to the reason that the vehicle was not insured, the claimant would not implead the said vehicle and the insurer.

9. We have come across many cases, where, we have ordered pay and recovery from the insurer of the offending vehicle, though the owner of the offending vehicle and its insurer were not impleaded. Thus, in these circumstances, to get rid of this situation and to avoid pay and recovery, we are of the considered view that it would be proper to implead the owner of the offending vehicle as well as the Insurance Company as one of the parties to the claim petition before the Tribunal. Therefore, it would be appropriate for the claimants to implead all the owner of the vehicles involved in the accident and the insurers of the said vehicles.

10. It appears that all the Tribunals are bent upon awarding compensation without worrying much about the negligence and liability. There may be cases of no negligence on the part of the person from whom compensation is sought for or apart from awarding contributory negligence where two or more vehicles would be responsible. The Tribunals cannot abdicate their duty in awarding compensation ignoring these facts. The Tribunals will have to find out the truth with respect to the negligence and liability and only thereafter go into the issue of adequacy of compensation. Merely because the claimant comes to the Court seeking compensation

pursuant to an accident, the insurance company or the transport corporation, as the case may be, cannot be fastened with compensation. We may note that the insurance cover cannot be a factor to fix the liability on the insurer notwithstanding the negligence.

11 As we have stated earlier, in order to avoid the said approach, we direct all the Tribunals within the State of Tamil Nadu and Puducherry not to number any of the claim petitions without impleading the other vehicle which was also involved in the accident. However, we make it clear that this will not apply to the cases of hit and run where the tort-feasor cannot be possible of identification. The Tribunals are expected to insist the claimant to array the driver and owner of the other vehicle which is stated to be involved in the accident as party respondent before numbering the claim petition.

सत्यमेव जयते

12. Learned counsel appearing for the appellant submits that by mistake, e-court fee has been paid to the Tamil Nadu Government for a sum of Rs.24,500/- though the appeal arises out of the order of the Tribunal in Karaikal. In such view of the matter, we direct the Registry to refund the court fee to the learned counsel for the appellant who

paid the said court fee.

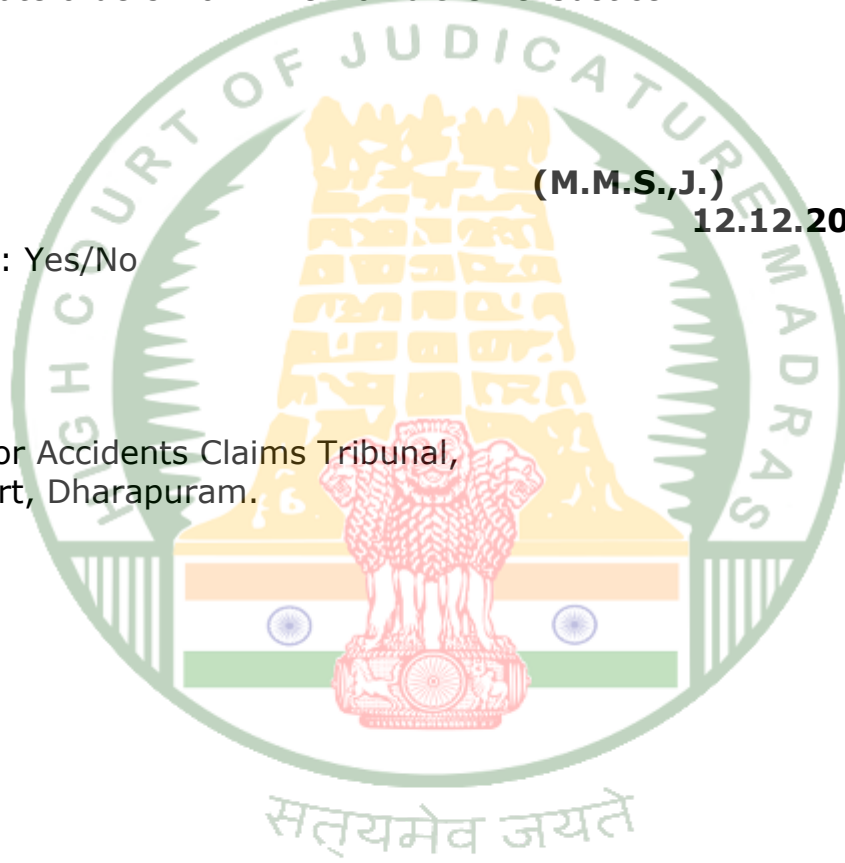
13. Registry is directed to circulate this judgment to all the Tribunals in the State of Tamil Nadu and Puducherry after getting appropriate orders from The Hon'ble Chief Justice.

(M.M.S.,J.) (K.R.,J.)
12.12.2019

Index : Yes/No
mmi

To

The Motor Accidents Claims Tribunal,
Sub Court, Dharapuram.

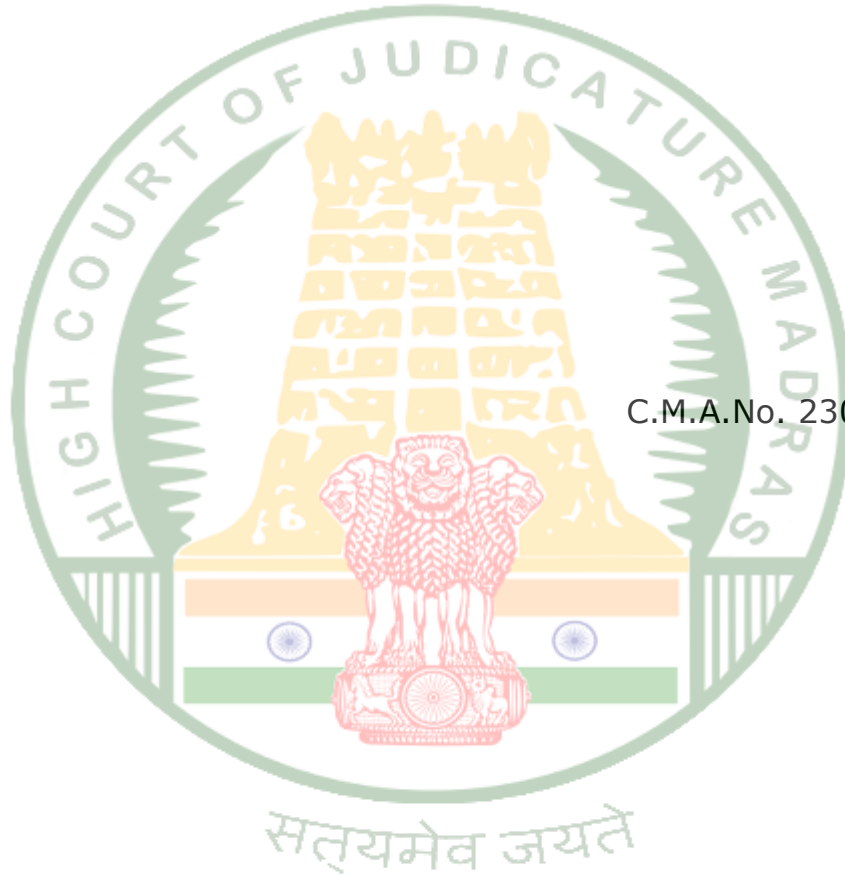


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