



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.295 of 2015

and

CMP(MD) No.3 of 2015

WEB COPY

M/s. Oriental Insurance Company Ltd.,
through its Branch Manager,
127/8, Bhuvaneswari Pandian Complex,
Madurai Road,
Virudhunagar.

: Appellant/2nd Respondent

Vs.

1.Muthuramalingam

: 1st respondent/Petitioner

2.Pachaimalai

3.Pandiarajan

: II Respondent/I Respondent

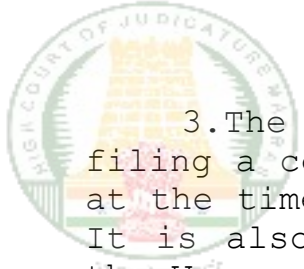
Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against judgment and decree passed in MCOP No.76 of 2011, dated 21.02.2014 on the file of the Motor Accident Claims Tribunal-cum-Subordinate Judge, Aruppukottai.

For Appellant	: Mr.C.Jawahar Ravindran
For 1 st Respondent	: Mr.S.J.Chakkaravarthy
For 2 nd Respondent	: Mr.M.Selvakumar
For 3 rd Respondent	: Mr.S.Srinivasa Raghavan

JUDGMENT

The appellant Insurance company has preferred this appeal challenging the award passed by the Motor Accidents Claims Tribunal (Subordinate Judge), Arupukkottai in MCOP No.76 of 2011, dated 21.02.2014.

2.MCOP No.76 of 2011 was filed by the first respondent against the appellant Insurance Company and the second respondent claiming a compensation of Rs.7,00,000/- on the ground that on 30.01.2011 when he was riding a motor cycle bearing registration No.TN-22-Z-8121 from east to west direction from Aruppukottai-Thiruchuli road, a TATA Ace bearing registration No.TN-67-AA-8076 came from the opposite direction in a rash and negligent manner, rammed the motor cycle. In the impact, the claimant sustained fracture on the left and right leg and grievous injuries on the shoulder and other parts of the body. It is the further case of the claimant that he was immediately taken to Aruppukottai Government Hospital and after first aid, he was admitted in Appolo Hospital, Madurai and he took treatment as inpatient from 30.01.2011 to 11.02.2011 and he underwent surgery and a plate was also implanted.



3.The appellant Insurance company contest the petition by filing a counter stating that the driver of the TATA Ace was drunk at the time of the accident, in violation of the policy condition. It is also stated that the claim is excessive and the driver of the Van as well the claimant did not have valid driving license to drive the vehicles. Therefore, they are not liable to pay any compensation.

4.Before the Tribunal, the claimant examined himself as PW1 and one Dr.Palanivel Rajan as PW2 and marked documents Exs.P1 to P7 and Exs.X1 to X4. On the side of the Appellant Insurance company, one Thirumal was examined as RW1 and marked Exs.R1 to R4.

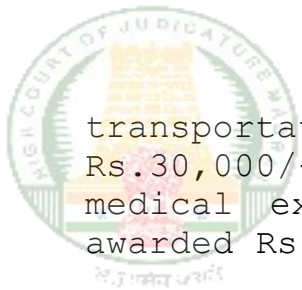
5.The Tribunal, after analysing the evidence, awarded compensation of Rs.3,46,000/- along with interest at the rate of 7.5% p.a., directing the appellant Insurance company first to satisfy the award amount and thereafter, recover from the owner of the vehicle. Challenging the said award, the present appeal has been filed.

6.Heard the rival submissions and perused the materials available on record.

7.Before the Tribunal, the claimant examined himself as PW1 and he deposed the manner of accident as set out in the claim petition. Ex.P1 First Information Report would reveal that a criminal case in Crime No.212 of 2011 was registered against the driver of the TATA Ace under Sections 279, 337 IPC and Section 185 of the Motor Vehicles Act. Ex.P2 Charge sheet would show that after investigation, the police filed the criminal case against the driver and he accepted the guilt and paid the fine amount. The trial court, based on the evidence, has rightly come to the conclusion that the driver of the TATA Ace caused the accident.

8.PW1 has further stated that in the accident, his right leg got fracture and there were grievous injuries on the right shoulder and he took treatment at Apollo Hospital, Madurai. Ex.P3 Accident Register corroborates the evidence of PW1. PW2 Dr.Palanivej Rajan has given evidence stating that the claimant has suffered 47% permanent disability and also deposed that the claimant cannot lift weight through his right hand due to the injuries. Further, on the shoulder and on the behalf of the claimant, documents Exs.X3 and X4 X-rays and Ex.P7 medical bills were produced. Ex.X1 is the disability certificate.

9.The Tribunal, upon consideration of the oral and documentary evidence, applying Rs.2,000/- per Percentage has awarded Rs.94,000/- towards permanent disability, Rs.15,000/- towards loss of income during treatment period, Rs.2,000/- towards



transportation charges, Rs.5,000/- for extra nourishment, Rs.30,000/- towards pain and sufferings and Rs.2,00,000/- towards medical expenses based on Ex.P7. In total, the Tribunal has awarded Rs.3,46,000/- together with interest @ 7.5% p.a.

10. Admittedly, the claimant is a 3rd party. The Tribunal having found that the 3rd respondent, who is the owner of the TATA Ace drove the vehicle in contravention of the Motor Vehicles Act and policy condition, directed the appellant Insurance Company to pay the compensation amount and then recover from the owner. In my considered view, the award of the Tribunal is fair and reasonable and there is no merit in this appeal.

11. In the result, this appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal petition before the Tribunal. Since, the claimant is the 3rd party, the appellant Insurance Company shall pay the award amount and then recovery from the owner as per the direction of Tribunal, by following the mode in Nanjappan's case [(2004)13 SCC 224]. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To
The Motor Accident Claims Tribunal cum
The Subordinate Judge,
Aruppukottai.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.C.Jawahar Ravindran, Advocate SR.No.39242
+1cc to Mr.S.J.Chakkaravarthy, Advocate SR.No.39456
+1cc to Mr.M.Selvakumar, Advocate SR.No.39851

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SMA:SKS-RR:3.11.2016:3P/6C