



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.602 of 2015

and

M.P.(MD).No.1 of 2015

The New India Assurance Company Limited,
Represented by its Branch Manager,
Tirunelveli District,
Tamil Nadu.

... Appellant/2nd Respondent

Vs.

1.Peer Mansoor Hussian
2.Kamaraj

3.The United India Insurance Company Limited,
Represented by its Divisional Manager,
2nd Floor, Xavier Buildings,
P.W.D.Officer Road, Nagercoil,
Nagercoil Village, Agastheeswaram Taluk,
Kanyakumari District. ... Respondents

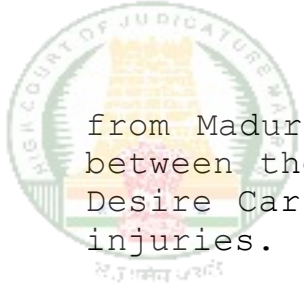
Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award and decree dated 19.12.2012 made in M.C.O.P.No.80 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabhapuram.

For Appellant	: Mr.B.Vijay Karthikeyan
For Respondents	: Mr.N.S.Ramakrishnadass for R1 Mr.S.Royce Emmanuel for R3 No Appearance for R2

JUDGMENT

Heard the learned counsel on either side.

2.The Insurance Company has filed this appeal challenging the impugned award on the ground of negligence. One Peer Mansoor Hussian, was travelling from Tirunelveli to Madurai road in his Maruthi Swift Desire car what was insured with the third respondent herein. A Maruthi Swift Desire car belonging to one Kamaraj was coming



from Madurai to Tirunelveli road. There was a head on collision between the two vehicles, namely, Ford Ikon car and Maruthi Swift Desire Car. The driver of the Ford Ikon car has suffered serious injuries.

3.The Tribunal gave a finding that the Maruthi Swift Desire car was coming in the wrong direction. Since it is a case of head on collision, negligence was apportioned equally between both the drivers. Liability was also fixed on the appellant accordingly. Challenging the same, this appeal has been filed.

4.The learned counsel for the appellant would contend that FIR was registered against the claimant who had pleaded guilty before the Criminal Court and also paid the fine amount. He would further submit that in view of the closure of the track on the left side of the road, the Maruthi Swift Desire car had moved to the other track in the National Highway. The Ford Ikon car tried to overtake the Transport Corporation bus and that is how the accident in question occurred. He drew my attention specifically to the admission made by the claimant in the cross-examination. I am not able to agree with the said submission of the learned counsel. This is for more than one reason. Though the owner cum driver of the Maruthi Swift Desire car, namely, Kamaraj was made a party in the claim proceedings, he chose to remain exparte. He was of course examined as RW2 before the Tribunal.

5.The learned counsel would now contend that the Four way track was partly closed and that is why the Maruthi Swift Desire Car had to change the track. But, there is absolutely no pleading in this regard before the Tribunal. As already pointed out, Kamaraj, the vehicle owner of the Maruthi Swift Desire car remained exparte. He did not plead to this effect. Therefore, I am not able to agree with this submission. The Tribunal has only apportioned the liability between the two Insurance companies. The award amount is also meagre. The Tribunal awarded a sum of Rs.1,60,556/- as compensation. I find no merit in this appeal.

6.The award dated 19.12.2012 made in M.C.O.P.No.80 of 2011, on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Padmanabhapuram is confirmed.

7.The appellant is directed to deposit the compensation amount as directed by the Tribunal with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.



8.This Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal/
The Subordinate Judge, Padmanabhapuram.

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

3.Mr.Kamaraj,
S/o.Krishnaswamy Nadar,
16-12th Street,
Yadava East Street,
Palayamkottai,
Tirunelveli-627 002.

+1cc to M/S.B.Vijay Karthikeyan, Advocate SR.No. 88437

+1cc to M/S.S.Royce Emmanuel, Advocate SR.No. 88121

+1cc to M/S.N.S.Ramakrishnadass, Advocate SR.No. 88819

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and

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20.11.2017

tsg

JM/SV MMS/SAR 1/19.12.2017/3P/7C