



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2017

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 597 of 2014

M/s.Oriental Insurance Company Ltd.,  
Rep by its Branch Manager,  
Sivakasi, Virudhunagar District. ... Appellant /2<sup>nd</sup> respondent  
**Vs.**

1.Kiran Kumar ... 1<sup>st</sup> Respondent/Claimant

2.Prem Subburaj ... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 27.08.2012 in M.C.O.P.No.90/2011 on the file of Motor Accident Claims Tribunal, cum Sub Court, Aruppukottai.

|                |                         |
|----------------|-------------------------|
| For Appellants | :Mr.C.Jawahar Ravindran |
| For R-1        | :Mr.V.Sasikumar         |
| For R-2        | :Dispensed with         |

### J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award, dated 27.08.2012 passed in M.C.O.P.No.90 of 2011 by the Motor Accident Claims Tribunal, cum Sub Court, Aruppukottai.

2. It is a case of injury sustained by the claimant in the accident, which took place on 26.06.2011 at about 8.30 p.m., near Palayampatti Natraj Marriage hall.

3. It is the case of the appellant/claimant before the Tribunal that when he tried to board a mini bus bearing Registration No.TN 67 H 6007 near Palayampatti Natraj Marriage Hall and when the petitioner was about to board the bus on the front, suddenly the conductor of the bus blew the whistle without observing the petitioner getting into the bus. The driver of the vehicle suddenly moved the bus and the petitioner fell down. The rear wheel of the mini bus ran over the right knee, right ankle and right foot of the petitioner. Thereafter, the petitioner was rushed to Aruppukottai Government Hospital, where he was admitted as in-patient. After ~~inpatient treatment~~, the petitioner was admitted in a private hospital from 26.06.2011 to 18.07.2011. Thereafter, he continued his treatment in a private hospital for his disablement. Hence, he filed



an application in M.C.O.P.No.90 of 2011 on the file of Motor Accident Claims Tribunal, cum Sub Court, Aruppukottai, seeking compensation.

4. Before the Tribunal, the appellant/claimant examined two witnesses as P.Ws.1 and 2 and marked twelve documents as Ex.P.1 to Ex.P.12 and the respondents did not let in any oral or documentary evidence. Court exhibits were marked as Exs.X1 to X4.

5.The Tribunal, after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, held that the accident occurred only, due to the rash and negligent driving of the bus and directed the 2<sup>nd</sup> respondent/Insurance Company to pay the compensation. Challenging the same, the appellant/Insurance Company has filed this present appeal.

6.The learned counsel for the appellant/Insurance company would submit that the claimant himself invited the accident and therefore, the appellant cannot be held responsible to pay the compensation and that amount awarded by the Tribunal is on the higher side and hence, the award of the Tribunal is to be set aside.

7.Per contra, the learned counsel appearing for the first respondent/claimant submitted that based on oral and documentary evidence, the Tribunal awarded a just and reasonable compensation and hence, this appeal filed by the Insurance Company is liable to be dismissed and prays for appropriate orders.

8. Heard the learned counsel for the first respondent / claimant and perused the materials available on record.

9. On perusal of the judgment of the Court below, it is seen that at Page No.16 of the typed set of pages, wherein, the learned Judge has elaborately discussed about the way in which the accident had taken place. The charge sheet was filed against the driver of the offending vehicle where fine was imposed on the driver and on failure to pay the amount in question, simple imprisonment was ordered. The learned Judge also found that there is no contradictory evidence to show that the occurrence was due to the first respondent's driver and concluded that the accident was due to the rash and negligent driving of the first respondent and has rightly decided as to the liability fixed at 48%, in which, there is no interference is required. Further, the award given by the learned tribunal is also very low. However, the claimant has not filed any cross-appeal before this Court and therefore, the award of the tribunal stands confirmed. To sum up, I do not intend any merits to interfere with the order of the tribunal.

10. In the result, this Civil Miscellaneous Appeal is dismissed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, less the



amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount, with accrued interests and costs, without filing any formal application before the Tribunal. No Costs.

WEB COPY

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To,

1. The Subordinate Judge,  
Motor Accident Claims Tribunal,  
Aruppukottai.
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to M/s.V.SASIKUMAR, Advocate in SR. 71089

+1cc to M/s.C.JAWAHAR RAVINDRAN, Advocate in SR. 71409

RJ2

JS/KP/SAR1/31.08.2017/3P/5C

**C.M.A(MD)No. 597 of 2014**

**07.08.2017**