



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **10.08.2017**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.1338 of 2011

and

M.P.(MD)No.1 of 2011

The Branch Manager,
National Insurance Company Ltd.,
Sivakasi.

... Appellant/Respondent No.2

Vs.

1.A.Raju

... 1st Respondent/Petitioner

2.A.Mariappan

...2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20th January, 2011 made in MCOP No.208 of 2008 on the file of Motor Accidents Claims Tribunal, Sub Court, Srivilliputhur.

For Appellant	: Mr.N.Murugesan
For R-1	: Mr.M.Thirunavukarasu
For R-2	: No Appearance

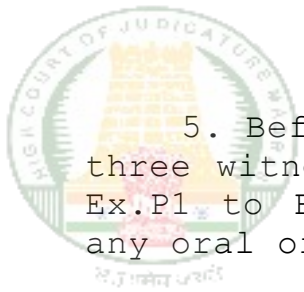
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 20.01.2011 made in M.C.O.P.No.208 of 2008 by the Motor Accident Claims Tribunal, Sub-Court, Srivilliputhur.

2. It is a case of injury sustained by the first respondent/claimant, in an accident, which took place on 14.10.2005 at 10.30 a.m., at Sivakasi-Srivilliputur, Main road, near District Court Campus.

3. It is the case of the injured/claimant before the Tribunal that on the date of accident, when he was riding his bicycle towards Srivilliputhur at Sivakasi-Srivilliputhur main road, the Ambassador car bearing Registration No.TN 72 F 1969 was driven by its driver rashly and negligently and due to that, the car dashed against the bicycle and the injured was thrown away and due to which, the injured/claimant sustained injuries.

4.The injured claimant filed an application in
<https://hmcscs.courts.mv.in/1290/cases/> of 2008, on the file of the Motor Accident Claims Tribunal Sub-Court, Srivilliputur, seeking compensation.



5. Before the Tribunal, the first respondent/claimant examined three witnesses as P.W.1 to P.W.3 and marked fifteen documents as Ex.P1 to Ex.P15. The appellant/Insurance Company did not let in any oral or documentary evidence before the Tribunal.

6. 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 rash and negligent driving of the driver of the ambassador car and therefore, directed the appellant/Insurance Company to pay the compensation of Rs.2,00,072/-.

7. Against which, the appellant/Insurance Company has filed this present appeal challenging the quantum awarded by the Tribunal.

8. The learned counsel for the appellant/Insurance Company submitted that the Tribunal failed to consider the differences in injuries both in the claim petition and in the evidence of the Doctor and the Doctor was examined as P.W.3 and he fixed the disability at 40% after a period of five years. He further submitted that the compensation awarded under the other heads are also on higher side and therefore, the award of the Tribunal warrants interference.

9. Per contra, the learned counsel for the first respondent/claimant submitted that after conducting enquiry, the Tribunal found that the injuries sustained by the injured are grievous in nature and the appellant had never raised any objections during the course of enquiry and now by raising objections, the present appeal has been filed and therefore, the appeal is to be dismissed.

10. Heard the submissions made on either side and perused the materials available on record.

11. A perusal of the award shows that after thorough discussions only, the learned Judge fixed the disability and awarded compensation and that has not been objected by the Insurance Company at that time, now they come and objected that there are differences in the injuries in the claim petition and in the evidence of the Doctor. In my considered view, error occurs at the time of filing these kind of petitions, because, sometimes, these petitions are being filed by the Advocates without even seeing the claimants. Therefore, there is no infirmity in the award passed by the Tribunal and the same does not warrant interference at the hands of this Court.

12. In view of the above, this Civil Miscellaneous Appeal is dismissed. The award dated 20.01.2011 passed in M.C.O.P.No.208 of 2008 on the file of the Motor Accident Claims Tribunal Sub Court, Srivilliputtur, is hereby confirmed. The



appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interests and costs. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To,

1.The Motor Accident Claims Tribunal, Sub-Court,
Srivilliputur.

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

+1cc to M/S.M.THIRUNAVUKKARASU, Advocate SR.No.71787

+1cc to M/S.N.MURUGESAN, Advocate SR.No.71895

pm

MAS/MR-KKR/SAR2:31.08.2017:3P-5C

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