



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No. 177 of 2011
and
M.P.(MD)No.1 of 2011

Divisional Manager,
The New India Assurance Company Ltd.,
242 B, Kamarajar Salai,
Madurai.

... Appellant/Respondent-2

Vs.

1.R.Raja

... 1st Respondent/ Petitioner

2.K.Arumugam

... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.10.2010 and made in M.C.O.P.No.1189 of 2003 on the file of the Motor Accidents Claims Tribunal, IV Additional Sub Judge, Madurai.

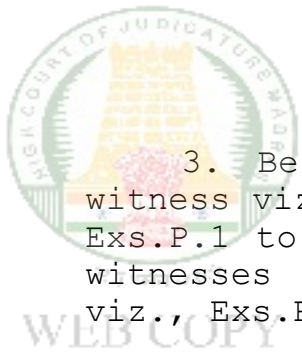
For Appellant : Mr.A.K.Baskarapandian
For Respondents : No Appearance

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the award dated 04.10.2010 and made in M.C.O.P.No.1189 of 2003 on the file of the Motor Accidents Claims Tribunal, IV Additional Sub Judge, Madurai.

2. The brief facts of the case are as follows:

It is a case of injury, which caused in the accident took place on 11.05.2003 at about 04.00p.m. When the injured claimant was walking near Sourashtra Boys Higher Secondary School, Madurai, a motorcycle bearing Registration No.TN-59-S-4689, belonged to the first respondent, which was insured with the second respondent Insurance Company came in a rash and negligent manner and dashed against him. Due to the said impact, the injured claimant sustained multiple injuries. Hence, he claimed a petition in M.C.O.P.No.1189 of 2003, on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai, claiming a sum of Rs.2,00,000/- as compensation.



3. Before the Tribunal, on the side of the claimants, two witness viz., P.W.1 and P.W.2 were examined and nine documents viz., Exs.P.1 to P.9 were marked and on the side of the respondents, two witnesses viz., R.W.1 and R.W.2 were examined and two documents viz., Exs.R.1 and R.2 were marked.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing 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 driver of the offending vehicle and directed the appellant/Insurance Company to pay a sum of Rs.1,03,955/-, as compensation.

5. Against which, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

6. The learned Counsel for the appellant would contend that the accident was occurred only due to the rash and negligent act of the petitioner and hence, Insurance Company is not liable to pay compensation. Hence, he seeks interference of this Court to the award passed by the Tribunal.

7. Though notice was serviced on the respondents, there was no appearance on behalf of the respondents either through Counsel or in person. Heard the learned counsel appearing for the appellant and perused the materials available on record.

8. The Tribunal in its judgment has found as follows:

It is contended by the second respondent that there is inconsistent statement by petitioner in FIR, Ex.P1 and medical report Ex.R1. Ex.R1, it is found that while the petitioner was a pillion rider, the accident occurred; but FIR disclosed that first respondent vehicle dashed the petitioner in his behind. Hence, second respondent argued that it is a false case. FIR must be given much important than Ex.R1. Ex.R1 statement to the doctor is a hearsay evidence. Further there is 21 days delay in lodging FIR. This forum decided that when there is a charge sheet and first respondent's driver admitted the offence there is no other go accept the negligence for the accident was on the part of the vehicle's rider. The petitioner examined as P.W1 and marked Ex.P1, FIR, P2, charge sheet, P3, M.V.Report and P5, lower Court judgment of the alleged accident. From the records, it is evident that due to the first respondent's driver's negligent act, the accident was occurred. Further the driver was convicted for the offence. Further P.W.1 also deposed that due to first respondent driver's negligent act the accident occurred. The manner in which deposed is believable one. Hence this forum hold that the first respondent's driver's rash and



negligent act is the cause for the accident and thus this point is answered accordingly.

9. On a reading of the finding of the Tribunal, it is clear that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle. It is further seen that the driver of the offending vehicle has admitted his guilt. Hence, the Tribunal has come to the conclusion that the accident had occurred only due to the rash and negligent driving of the offending vehicle and hence, the Tribunal has directed the appellant Insurance Company to pay the compensation to the injured claimant. In view of the above, this Court is of the view that there is no error in the finding of the Tribunal and the Tribunal has awarded just and reasonable compensation. Hence, there is no infirmity or irregularity in the award passed by the Tribunal. Therefore, this Civil Miscellaneous Appeal deserves to be dismissed.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 04.10.2010, made in M.C.O.P.No.1189 of 2003 on the file of the Motor Accidents Claims Tribunal, IV Additional Sub Judge, Madurai, is hereby confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made, the injured claimant is permitted to withdraw the entire award amount with accrued interests and costs without filing any formal petition before the Tribunal. No Costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

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

+ 1 CC TO Mr.A.K.BASKARA PANDIAN, ADVOCATE IN SR No. 74463

SSL

TE/MR-KKR/SAR-I : 06/09/2017 : 3P/4C