



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A(MD)No.204 of 2007

and

M.P(MD)No.1 of 2007

WEB COPY

The Branch Manager,
The New India Assurance Company Limited,
402-Tenkasi Road,
Rajapalayam

... Appellant/2nd Respondent

Vs.

1.Ajay

... 1st Respondent/
Petitioner

2.T.Mariappan
(Ex-parte before Tribunal
& not a necessary party)

... 2nd respondent / 1st respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the fair and decretal order dated 30.06.2006, made in M.C.O.P.No.80 of 2003 on the file of the MACT-Sub Judge, Srivilliputhur.

For Petitioner	: Mr.K.Elangovan
For R-1	: No Appearance

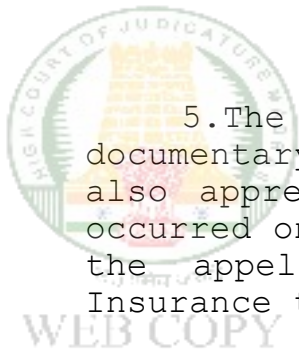
J U D G M E N T

The New India Assurance Company Limited, who is the second respondent before the Motor Accidents Claims Tribunal (Sub Court), Srivilliputhur, in M.C.O.P.No.80 of 2003, is the appellant herein.

2.It is the case of the injured/claimant before the Tribunal that on 05.06.2002, at about 10.00 p.m., when he was riding his TVS-50 Super XL, bearing registration No.67 V 1787 TN 55 H 9208, from North to South at Srivilliputhur to Rajapalayam main road, an auto bearing registration No.TN 67 V 0603, which was coming behind the petitioner, dashed against him and in that accident, the injured/claimant sustained injuries and fracture.

3.The claimant filed an application in M.C.O.P.No.80 of 2003 on the file of the Motor Accident Claims Tribunal/Sub Court, Srivilliputhur seeking compensation of Rs.4,90,000/-.

4.Before the Tribunal, the injured/claimant was examined as P.W.1 and four documents were marked as Ex.P.1 to Ex.P.4. On the side of the appellant / Insurance Company, one witness was examined as P.W.1 and eight documents were marked as Ex.R.1 to Ex.R8.



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 driver of the appellant/Insurance Company and directed the appellant / Insurance to pay a sum of Rs.40,000/-, as compensation.

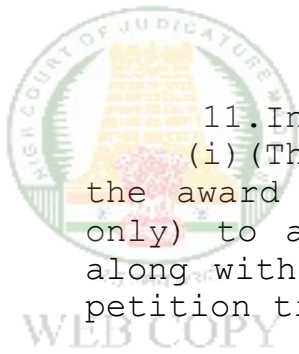
6.Against which, the appellant/Insurance Company has filed this present appeal challenging the liability as well as quantum.

7.The learned counsel for the appellant / Insurance submitted that the alleged date of accident was 05.06.2002 and the complaint was given to the Police only on 23.07.2002 that is after 48 days of the alleged accident and that the delay has not been explained properly and therefore, the appellant is not liable to pay compensation. Further, he would submit that the quantum of compensation fixed by the Tribunal is excessive and therefore, the award of the Tribunal requires interference.

8.Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record. Though notice was served on the claimants/first respondent, there is no representation for the claimants/first respondent either in person or through counsel. In respect of R2, he was set exparte by the Tribunal.

9.Though the learned counsel for the appellant strongly opposed for filing the FIR after the period of 48 days after the accident, this Court is of the view that R.W.1 in his cross examination has stated that they are disputing the liability only based on the delay in filing the FIR after 48 days of the accident, but however, the Tribunal came to the conclusion that since the petitioner / claimant was admitted in the hospital through out 48 days, he was not able to file the FIR. Further, the hospital authority has also not informed about the accident to the police. Therefore, the claimant alone is not responsible for the delay in lodging the FIR after 48 days of the accident and therefore, this Court is not in a position to accept the contention of the appellant and therefore, there is no infirmity in fixing the liability on the appellant / Insurance Company and the same does not require interference at the hands of this Court.

10.With regard to the quantum of compensation, on perusal of Ex.P.2-accident register, though it is seen that the first respondent / claimant was sustained grievous injuries, he has not produced any medical bills before the Tribunal and therefore, this Court is inclined to reduce the compensation from Rs.40,000/- to Rs.35,000/-.



11.In the result,

(i)(This Civil Miscellaneous Appeal is partly allowed) reducing the award of the Tribunal from **Rs.40,000/-** (Rupees Forty Thousand only) to a sum of **Rs.35,000/-** (Rupees Thirty Five Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation with proportionate cost;

(ii).The appellant/Insurance Company is directed to deposit the entire award amount namely, Rs.35,000/- along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.No.80 of 2003 on the file of the MACT-Sub Judge, Srivilliputhur, within a period of **Two weeks** from the date of receipt of a copy of this judgment;

(iii).On Such deposit, the Tribunal is directed to transfer the entire award amount namely Rs.35,000/- along with accrued interest and costs directly to the Personal Savings Bank Account Number of the first respondent / claimant through RTGS/NEFT system, after getting his Account Details, within a period of **two weeks thereafter**; and

(iv).In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Rj2

To

1.The Motor accident Claims Tribunal/
Sub Judge, Srivilliputhur.

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

+1CC TO Mr.K.Elangovan, ADVOCATE IN SR No. 85156.

C.M.A(MD)No.204 of 2007
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CS(14.10.2019) 3P 5C