

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3156 of 2012 &
M.P.No.1 of 2012

The Divisional Manager,
United India Insurance Co. Ltd.,
46, Katpadi Road,
Vellore.

... Appellant/4th Respondent

..Vs..

1.P.Karthikeyan

...Respondent/Petitioner

2.M.Mahade

3.The Divisional Manager,
National Insurance Co. Ltd.,
No.19, Officers' Line,
Vellore.

...Respondent/1st and 2nd Respondent

4.Fright Master Engineering Pvt. Ltd.,
Nelson Manickam Road,
Chennai

... Respondent/3rd Respondent

(Respondents 2 & 4 are set
exparte in the lower court)

Prayer: Civil Miscellaneous Appeals filed under Section 173 of
the Motor Vehicles Act, 1988, against the judgement and decree
dated 23.11.2009 made in MCOP.No.197 of 2006 on the file of the
Motor Accident Claims Tribunal (Additional Subordinate Judge) at
Tiruvannamalai

For Appellant : Mr.S.Arun Kumar

For Respondent 1 : No appearance

For Respondent 3 : Mr.D.Bhaskaran

R2 & R4 set exparte

JUDGMENT

(This Appeal has been taken up for hearing through Video
Conferencing)

This Appeal has been filed by the insurer of the car
bearing registration No.TN02-D-2594 which is owned by the fourth

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respondent. Two vehicles namely the aforementioned car as well as a bus bearing registration No.KA05-A-117 insured with the third respondent and owned by the second respondent were involved in an accident which took place on 21.07.2004 resulting in the first respondent who was travelling in the car sustaining injuries.

2. The first respondent preferred a claim before the Motor Accident Claims Tribunal (Additional Sub Judge, Thiruvannamalai) in MCOP.No.197 of 2006 seeking compensation of Rs.5,00,000/- for the injuries sustained by him. The Motor Accident Claims Tribunal under the impugned award held that both the vehicles namely the car and the bus were equally responsible for the cause of the accident and fixed the contributory negligence on the insurer of both the vehicles at 50:50. The Tribunal under the impugned award also assessed the compensation payable to the first respondent at Rs. 1,78,715/- together with interest and cost. The details of the compensation awarded to the first respondent are as follows:

Sl.No.	Heads	Award Amount
1	Transportation charges	2,000/-
2	Extra Nourishment charges	2,000/-
3	Attender charges	2,000/-
4	Pain and suffering	10,000/-
5	Loss of income for three months	60,000/-
6	Medical Expenses	42,715/-
7	Partial Permanent Disability	60,000/-
Total		1,78,715/-

3. Aggrieved by the award dated 23.11.2009, this appeal has been filed by the insurer of the car.

4. The Appellant has preferred this appeal on the ground that they are not liable to compensate the first respondent/claimant, since the car which was insured with them was not responsible for the cause of the accident and that FIR was registered only against the bus which is insured with the third respondent. They have also challenged the award by questioning the quantum of compensation awarded by the Tribunal.

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5. Heard Mr.S.Arun kumar, learned counsel for the Appellant and Mr.D.Bhaskaran, learned counsel for the third respondent. Despite service of notice on the first respondent, there is no representation on the side of the first respondent. Second and fourth respondents remained exparte both before the Tribunal as well as this Court.

6. Before the Tribunal, the first respondent/claimant filed nine documents which were marked as Ex.A1 to Ex.A9 and two witnesses were examined namely the claimant himself as PW1 as well as the doctor who examined him as PW2. On the side of the third respondent, two documents were filed which were marked as Ex.B1 and Ex.B2 and only one witness was examined as RW1. On the side of the Appellant insurance Company, no document was filed but one witness was examined as RW2.

7. As seen from the impugned award, in respect of two other claims already disposed of by the Tribunal under two different awards involving the same accident, the Appellant insurance company as well as the third respondent insurance company were held to be equally responsible for the cause of the accident. Being an head on collision between a bus and a car, as seen from the evidence available on record which has not been disputed, the Tribunal has rightly held that both the vehicles were at fault and the insurance companies of the respective vehicles were equally responsible to pay the assessed compensation amount to the claimant. Further as indicated earlier, two other awards were passed involving the same accident wherein the Tribunal in those awards, has also given a finding that both the vehicles were equally responsible for the cause of the accident. The Tribunal has also mentioned the connected MCOPs which have been arisen out of the same accident and in one of the connected matters namely MCOP.No.452 of 2005, both the insurance companies were directed to pay the assessed compensation in the ratio of 50 : 50 to the claimants in that MCOP.

8. The accident happened in the year 2004. At this stage, after a lapse of almost 16 years without their being any evidence that the vehicle insured with the Appellant was not at fault, the findings of the Tribunal under the impugned award that both the vehicles were at fault cannot be disputed now.

9. This Court has also perused and examined the evidence available on record and has also examined the reasoning given by the Tribunal for coming to the conclusion that both the vehicles were at fault. This Court does not find any merit in the contention of the Appellant that the car which has been insured with them was not at fault. Insofar as the contention raised by

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the Appellant with regard to the quantum of compensation assessed by the Tribunal is concerned, the said contention also does not deserve any merit for the following reasons:

(a) the first respondent sustained multiple fracture on his face, right ear, left side neck and left upper eyelid. In order to prove his injuries, the first respondent has also filed the wound certificate, X-Ray and permanent disability certificate which have been marked as Ex.A3, Ex.A9 and Ex.A8 respectively before the Tribunal. The Tribunal has considered the same and assessed the quantum of compensation, based on the avocation of the first respondent and the injuries sustained by him.

(b) The first respondent has also filed the medical bills for the expenses incurred by him for his treatment. The nature of injuries sustained by the first respondent has also not been disputed by the Appellant before the Tribunal.

(c) Considering the same, the Award for a sum of Rs.1,78,715 in favour of the first respondent by the Tribunal under the impugned Award is a just compensation which does not call for any interference by this Court.

10. For the foregoing reasons, there is absolutely no merit in this Appeal. Accordingly, this Appeal is dismissed. The Appellant insurance company as well as the third respondent insurance company are directed to deposit the award amount in the ratio 50:50 after deducting the amount already deposited, if any, together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal to the credit of MCOP.No.197 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first respondent is permitted to withdraw the award amount along with accrued interest lying to the credit of MCOP.No.197 of 2006 by filing an appropriate application. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Tiruvannamalai.

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2.The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.3156 of 2012

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