

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.869 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

M/s.ICICI Lombard General Insurance Company Limited  
ICICI Bank Towers,  
Bandra-Kurla Complex,  
Mumbai 400 051. ... Appellant/Respondent2

vs

1.Kuppusamy ... Respondent1/Petitioner

2.K.Selvaraj  
(R2 set exparte in lower Court) ... Respondent2/Respondent1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 27.08.2010 made in M.C.O.P.No.199 of 2010, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Erode.

For Appellant : M/s.R.Sreevidhya  
R1 : Notice Not Ready  
R2 : Exparte

J U D G M E N T

Heard the learned counsel for the appellant. Though this appeal is of the year 2011 and the claim petition pertains to the year 2010, the appellant has not served notice to the 1<sup>st</sup> respondent (contesting respondent) till date. The 2<sup>nd</sup> respondent has remained exparte in lower court. Since no adverse order is proposed to be passed against the respondents, this Civil Miscellaneous Appeal is taken up for final disposal.

2. This Civil Miscellaneous Petition has been filed against the impugned Judgment and Decree dated 27.08.2010 passed by the

Motor Accident Claims Tribunal (Chief Judicial Magistrate), Erode, in M.C.O.P.No.199 of 2010.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.78,500/- together with interest at 7.5% per annum from 27.07.2007 to 17.06.2008, 03.07.2009 to 14.09.2009 and from 03.02.2010 till the date of deposit, to the 1<sup>st</sup> respondent. Aggrieved by the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4. On 23.06.2007 at about 10.45 a.m, the 1<sup>st</sup> respondent was riding moped along with his wife as pillion rider. At the time, a Mini door Auto bearing registration number TN 33 AX 9444 hit the moped, as a result of which, the 1<sup>st</sup> respondent had suffered injury. Based on the above, the 1<sup>st</sup> respondent had filed the claim petition for a compensation of Rs.2,00,000/-. In the said claim petition, the Tribunal has awarded the compensation of amount of Rs.78,500/- to the 1<sup>st</sup> respondent/claimant, under the following heads:-

|                      |             |
|----------------------|-------------|
| Permanent Disability | Rs.50,000/- |
| Pain and Sufferings  | Rs.15,000/- |
| Nourishment          | Rs.08,000/- |
| Transport            | Rs.03,000/- |
| Loss of Income       | Rs.02,500/- |
| Total                | Rs.78,500/- |

5. In this appeal, the main ground on which the award is contested is that the Tribunal erred in coming to an erroneous conclusion that the accident was due to the negligence in absence of any proper evidence to corroborate that the accident had taken place with Mini door Auto insured with appellant. It is further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents had colluded each and other and therefore the Tribunal erred in awarding the aforesaid compensation. He further submits that the PW-2 had not treated the 1<sup>st</sup> respondent and therefore, the determination of injury by the Tribunal was also incorrect. Finally, he submits that the amount awarded as compensation is question above based on the alleged income earning of the 1<sup>st</sup> respondent/claimant.

6. Considering the fact that the appellant has not served the notice to the contesting 1<sup>st</sup> respondent and considering the fact that the impugned award of the Tribunal is well reasoned, I am inclined to dismiss the present Civil Miscellaneous Appeal.

7. The appellant Insurance Company is therefore directed to deposit the balance amount of compensation and cost if any, together with interest at 7.5% per annum for the period as was

ordered in the impugned Judgment and Decree, within a period of six weeks from the date of receipt of a copy of this Judgment.

8. On such deposit being made by the appellant Insurance Company, the 1<sup>st</sup> respondent is permitted to withdraw the same together with interest as was ordered in the impugned Judgment and Decree by filing suitable application before the Tribunal.

9. Accordingly, the present Civil Miscellaneous Appeal stands dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:  
The Chief Judicial Magistrate,  
The Motor Accident Claims Tribunal  
Erode.

Copy To  
The Section Officer,  
V.R.Section, High Court Madras 104

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EV (CO)  
RMP (19/12/2020)

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