



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.12.2020

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.515 of 2009

and

M.P(MD) Nos.1 & 2 of 2009

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The Oriental Insurance Co., Ltd.,
through its Branch Manager,
Theni Government Hospital Salai,
Theni District.

.. Appellant/2nd Respondent

vs.

1.M.Selvaraj (Minor)
(Minor 1st respondent rep. by his
father and Natural Guardian Mani) .. 1st Respondent/Petitioner

2.Malaichamy .. 2nd Respondent/1st Respondent
(2nd Respondent Remained exparte before the Lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Award made in M.C.O.P.No.49 of 2008, dated 12.02.2009 on the file of the Motor Accidents Claims Tribunal-cum-Sub-Court, Aruppukkottai.

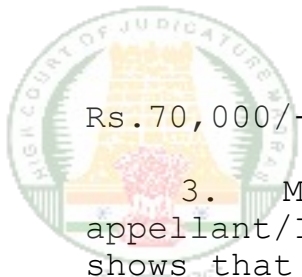
For Appellant
For R2

:Mr.K.Bhaskaran
:Mr.R.Venkateshwaran
(R-1 dismissed vide Court order
dated 29.11.2017)

J U D G M E N T

The appellant/Insurance Company preferred this appeal challenging the judgment and award passed by the Motor Accident Claims Tribunal-cum-Sub-Court, Aruppukkottai in M.C.O.P.No.49 of 2008, dated 12.02.2009.

2. This is a case of injury and the claimant was 16 years old on the date of accident, which took place on 26.02.2007. It is the case of the claimant that when he was travelling along with his maternal uncle, he drove the vehicle in a rash and negligent manner and caused the accident. In the impact, he fell down and sustained fracture and injuries. Though, he claimed a sum of Rs.1,40,000/- towards compensation, but the Tribunal awarded only a sum of



Rs.70,000/- along with interest at the rate of 7.5% p.a.,

3. Mr.K.Bhaskaran, learned counsel appearing for the appellant/Insurance Company would urge that the Accident Register shows that the Two-wheeler was driven by the father of the claimant, but in the claim petition it is stated that the rider of the motorcycle was the claimant's uncle Malaichamy. It is next contented that the Tribunal has not properly appreciated the evidence adduced by the parties, directed the Insurance Company to pay the compensation.

4. Per contra, the learned counsel appearing for the claimant justified the decision of the Tribunal and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. A perusal of the records shows that the claimant was 16 years old on the date of accident. According to the claimant, the vehicle was driven by his uncle Malaichamy on 26.02.2007 and when he applied sudden break, the vehicle skidded and the claimant fell down and sustained fracture in the right hand, teeth was also broken and he was immediately taken to Government Rajaji Hospital, Madurai. He further stated that he was studying 9th standard at Thiruvathavur Government Higher Secondary School. To corroborate the evidence of P.W.1, Ex.P1-FIR, Ex.P5-Judgment in a Criminal Case were marked. The driver of the vehicle pleaded guilty and paid the fine amount. Therefore, I am of the view that the contention of the learned counsel appearing for the appellant has no substance.

7. P.W.2-Doctor Sampathkumar after examining the claimant and the medical records, assessed the disability at 35.6%. Ex.P4 is the disability certificate. Ex.P6 shows that the claimant has also taken treatment at Vinayaga Dental Clinic at Madurai. After scrutinising the evidence adduced by the claimant, the Tribunal has awarded a sum of Rs.54,000/- towards permanent disability, Rs.10,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment and Rs.1,000/- towards transportation. In total, a sum of Rs.70,000/- has been awarded as compensation along with interest at the rate of 7.5% p.a.,

8. The award of the Tribunal appears to be reasonable and hence, it is confirmed.

9. In that view, the Civil Miscellaneous Appeal is dismissed, as devoid of merits. Since the appeal is dismissed, the appellant is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this



order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Aruppukkottai.

Copy to:

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

+1 CC to M/s.K.BHASKARAN, Advocate (SR-25608[F] dated 15/12/2020)

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kmv (CO)

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