



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :17.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.422 of 2010

and

M.P.(MD)No.1 of 2010

The Oriental Insurance Co., Ltd.,
through its Branch Manager,
First Floor, D.D.J. Centre,
Opp. To Vadaseri Bus Stand,
Nagerkoil.

.. Appellant/2nd Respondent

Vs.

1.Esakki

..1st Respondent/Petitioner

2.Ajith Kumar

.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.490 of 2006 dated 15.09.2009 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Tirunelveli.

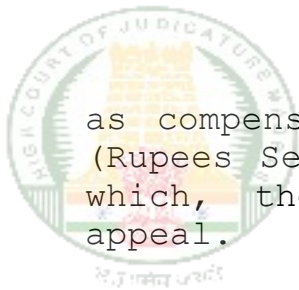
For Appellant	: Mr.K.Bhaskaran
For 1 st Respondent	: Died (vide order dated 21.03.2013)
For 2 nd Respondent	: Mr.M.Ramadhas

ORDER

Heard learned counsels appearing on both side.

2.This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.490 of 2006 dated 15.09.2009 on the file of the Motor Accident Claims Tribunal cum Principal Sub Judge, Tirunelveli.

3.The appellant herein is the second respondent, the first respondent herein is the petitioner/claimant and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a petition in M.C.O.P.No.490 of 2006 claiming a sum of Rs.5,00,000/- (Rupees Five Lakhs only)



as compensation. The Tribunal has awarded a sum of Rs.71,250/- (Rupees Seventy One Thousand Two Hundred and Fifty only). Against which, the appellant/insurance company has filed the present appeal.

4.A brief substance of the claim petition in M.C.O.P.No.490 of 2006 is as follows:

On 21.05.2006 at about 08.30 p.m., when the claimant was driving the jeep bearing Registration No.TN-69-G-0048 along the Tirunelveli - Thoothukudi main road near Periyavoran Branch road, a TATA Sumo bearing the Registration no.TN-74-D-1707 was driven by its driver in a rash and negligent manner and dashed against the jeep. The claimant sustained injuries. The petitioner was taken to Thoothukudi Government Hospital and was admitted as 'in patient' from 21.05.2006 till 26.05.2006. He had undergone surgery and steel plates were affixed and subsequently, he took treatment in a private hospital. The accident took place only due to the rash and negligent driving of the driver of the Tata Sumo. But a complaint was given by the first respondent against the claimant. At the time of accident, 11 persons travelled in the TATA Sumo and the TATA Sumo came along the wrong side of the road. The claimant was aged about 36 years at the time of accident. He was working as a driver and he earned Rs.6,807/- (Rupees Six Thousand Eight Hundred and Seven only) per month as salary. The claimant claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

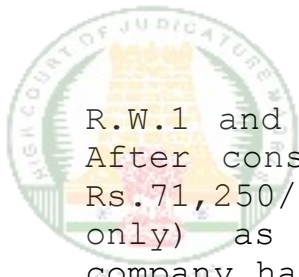
5.The brief substance of the counter filed by the first respondent is as follows:

TATA Sumo car was sold to one Jeba Sagai on 10.10.2005 for a sum of Rs.1,27,000/- (Rupees One Lakh and Twenty Seven Thousand only) and the first respondent has received the amount on that date itself and that owner has to be impleaded as the first respondent. The first respondent is not the owner of the vehicle at the time of accident and he need not to pay any compensation and that the petition to be dismissed.

6.The brief substance of the counter filed by the second respondent is as follows:

The accident was not due to the rash and negligent driving of the first respondent. The claimant came from the wrong side and he dashed against the vehicle of the first respondent. Only after investigation, chargesheet was filed against the claimant. The claimant sustained only minor injuries and the claim petition is to be dismissed.

7.On the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and 9 documents were marked as Exs.P1 to P9. On the side respondents, two witnesses were examined as



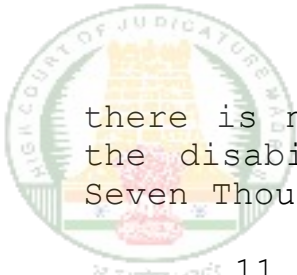
R.W.1 and R.W.2 and three documents were marked as Exs.R1 to R3. After considering both sides, the Tribunal has awarded a sum of Rs.71,250/- (Rupees Seventy One Thousand Two Hundred and Fifty only) as compensation. Against which, the appellant/insurance company has preferred this appeal.

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8.On the side of the appellant, it is stated that the Tribunal has failed to note that during the time of accident, the claimant was driving the vehicle along the wrong side of the road. The negligence was on the part of the claimant. The nature of accident was proved by the FIR. Once the FIR is admitted in evidence, the party who brings the same on record cannot be permitted to turn round to deny the contents. The driver of the insured vehicle does not have any valid licence to drive the vehicle at the time of accident. The insurance company has let in evidence to discharge its onus by summoning the RTO officials to prove that the driver did not possess a valid driving licence. The claimant is liable for contributory negligence. The amount awarded is excessive. The disability fixed is excessive. The evidence of P.W.2 is not in accordance with the medical science and prayed to set aside the award passed by the Tribunal.

9.It is seen that two vehicles dashed against each other and the accident is a head on collusion. The driver of the second respondent herein has lodged a complaint against the claimant. The copy of the FIR was marked as Ex.P1, the copy of the judgment was marked as Ex.P9. The claimant was acquitted of the charges. Ex.P6 the rough sketch, reveals that the accident was a head on collusion. The evidence of R.W.1 reveals that R.W.2 was not aware whether the driver was having badge. The driving licence was marked as Ex.R1. The sale agreement and delivery note for the sale of the vehicle was marked as Exs.R2 and R3. The second respondent's vehicle, driver was having a valid driving licence. There is no dispute regarding the validity of the insurance policy. The Tribunal has fixed 50 % contributory negligence on the part of the claimant and hence, there is nothing wrong in the decision of the Tribunal in fixing liability both on the claimant and on the second respondent herein.

10.It is also seen that the claimant sustained fracture and injuries. He lost two of his teeth and took treatment in Government Hospital for five days as 'inpatient' and then he took treatment as 'inpatient' from 21.05.2006 till 26.05.2006. He undergone surgery and outpatient sheet issued by the Thoothukudi Government hospital was marked as Ex.P4 and Ex.P5. The copy of the rough sketch was marked as Ex.P6. P.W.2 Doctor Ramaguru examined the claimant and issued disability certificate, Ex.P7. The doctor fixed the disability as 65%. X ray was marked as Ex.P8. There was no rebuttal evidence on the side of the respondents and hence,



there is nothing wrong in the decision of the Tribunal in fixing the disability as 65% and awarding Rs.97,500/- (Rupees Ninety Seven Thousand and Five Hundred only) towards the disability.

11.The Tribunal has awarded Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and suffering and Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment, Rs.5,000/- (Rupees Five Thousand only) towards transportation and Rs.10,000/- (Rupees Ten Thousand only) towards attendants charges. Totally a sum of Rs.1,42,500/- (Rupees One Lakh Forty Two Thousand and Five Hundred only) was awarded as compensation. Since the claimant is also responsible for the accident, the Tribunal has deducted 50 % of the award amount.

12.In the above circumstances, there is nothing sufficient enough to interfere in the judgment and decree passed by the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed by confirming the award Rs.71,250/- (Rupees Seventy one Thousand Two Hundred and Fifty only) passed by the Tribunal.

13.The appellant is directed to deposit the award amount along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and along with costs. The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this Judgment. On such deposit, the claimant is permitted to withdraw the same without filing any formal petition before the Tribunal and after deducting any amount already received by him earlier. The excess amount if any deposited shall be refunded to the appellant. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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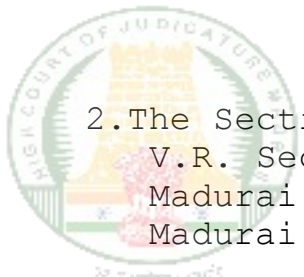
Sub Assistant Registrar(CS)

MRN

To

1.The Motor Accident Claims Tribunal cum Principal Sub Judge,
Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Section Officer, -2 COPIES
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.K.BHASKARAN, Advocate (SR-6638[F] dated 17/02/2020)

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