



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 18.12.2020

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.725 of 2010

and

MP(MD)No.1 of 2010

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Kaviraj Rajkumar

... Appellant/1st Respondent

vs.

1.P.Jaisingh

...1st Respondent / Petitioner

2.The Branch Manager,

Reliance General Insurance Co., Ltd.,

No.55, 80 Feet Road, First Floor,

Meenakshi Plaza,

Anna Nagar,

Madurai-625 020.

... 2nd Respondent / 2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 10.09.2009 made in M.C.O.P.No.343 of 2007 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate Court, Tirunelveli.

For Appellant : Mr.Anwar Sameem for Mr.I.Irulappan

For R1 : Dismissed vide Court order dated
29.11.2017

For R2 : Mr.S.Srinivasaraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 10.09.2009 made in M.C.O.P.No.343 of 2007 on the file of the Motor Accident Claims cum Chief Judicial Magistrate Court, Tirunelveli.

2.The case of the claimant before the Tribunal is that on 11.08.2007, at about 07.30 a.m, the petitioner was riding along with his son on Tuticorin to Trichy main road from South to North direction. When he was nearing the place of occurrence, the driver of the first respondent drove the vehicle in a rash and negligent manner and dashed against the petitioner, as a result of which, he sustained grievous injuries. The vehicle was bearing Registration No.TN-58-K-6494. He was admitted in the hospital at Aathoor and took treatment from 11.08.2007 to 12.08.2007. In respect of the occurrence, a case in Crime No.324 of 2007 was registered on the file of the Aathoor Police Station. Claiming compensation of Rs.2,00,000/- (Rupees Two Lakhs Only), he approached the Tribunal. At the time of the accident, he was working as a Contract Labour in TCW Company, Tuticorin and was earning a sum of Rs.4,000/- per month.



3.The first respondent contended that the accident took place only due to the rash and negligent driving on the part of the petitioner. Since the vehicle was insured with the second respondent, he is not liable to pay the amount.

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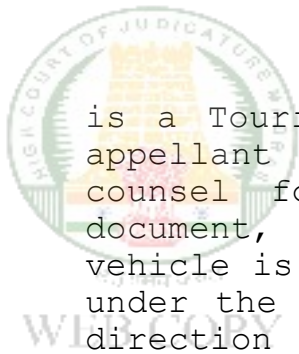
4.The second respondent, who is the appellant herein, has contended that at the time of the accident, the first respondent's vehicle driver was not owning proper and valid driving license. It is the policy violation and so, he is not liable to pay compensation.

5.Before the Tribunal, on the side of the petitioner/claimant, two witness were examined and ten documents marked. On the side of the respondent, two witnesses were examined and three documents marked.

6.At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver and on the basis of the medical records and disability certificate, it fixed Rs.1,500/- per percentage and awarded a sum of Rs.75,000/- for 50% disability and to that customary amounts were added and the total compensation amount would comes out Rs.1,05,489/- (Rupees One Lakh Five Thousand Four Hundred and Eighty Nine Only) and directed the Insurance Company to pay the award amount and recover the same from the owner of the vehicle, who is the appellant herein.

7.Challenging the same, the owner has filed this appeal on the ground that no such order ought to have been passed by the Tribunal since the offending vehicle was insured with the Insurance Company. The driver was owning a proper and valid driving license to drive the light motor vehicle. The want of endorsement for driving commercial vehicle, will not discharge the liability of the Insurance Company. At the time of argument, the main contention on the part of the appellant is that as per the judgment of **Hon'ble Supreme Court** reported in **Mukund Dewangan Vs Oriental Insurance Company** reported in **2017 14 SCC 663**, a person who is owning a light motor vehicle license, he got the right to drive commercial vehicle, for which, license was issued. The Tribunal based upon the earlier judgment, has passed an order, directing the Insurance Company to pay the amount and recover the same from the owner. The judgment of Hon'ble Supreme Court (cited supra) is now ruling the field.

8.The learned counsel for the second respondent/Insurance Company fairly conceded that the evidence on record shows that the unladen weight of the vehicle is below 7500 kg, then he has no objection to quash the order as per law. For that purpose, the appellant would rely upon Ex.R.2, the copy of the Registration Certificate, which was produced and marked before the Tribunal during the evidence, wherein, it has been mentioned that the vehicle



is a Tourist Motor Cab and having unladen weight of 975 kg. The appellant was directed to send a copy of this document to the counsel for the second respondent also. So, on a perusal of document, it clearly shows that unladen weight of the offending vehicle is below 7500 kg. So, this type of vehicle squarely covered under the judgment of Hon'ble Supreme Court (cited supra). So, the direction of the Tribunal is required to be set aside and accordingly, it is set aside and both the owner as well as the Insurance Company are jointly and severally directed to pay the award amount. The order of the Tribunal is modified.

9. There is no argument with regard to the quantum by the Insurance Company. There is no cross objection also. The appellant has not challenged the quantum fixed by the Tribunal. A perusal of records show that the Tribunal, after taking into account the nature of injury, avocation of the claimant, medical records, disability certificate and evidence of the Doctor, who assessed the disability, came to the finding that the petitioner had sustained 50% disability and accordingly on percentage basis, it fixed the compensation along with customary amounts and the medical expenditure. So, the quantum fixed by the Tribunal, on the basis of the evidence at Rs.1,05,489/- (Rupees One Lakh Five Thousand Four Hundred and Eighty Nine Only), requires no interference. So, if the amount has not been deposited, the same shall be deposited by the second respondent herein within a period of two months from the date of receipt of copy of this order. On such deposit being made, the claimant is permitted to withdraw the same with accrued interest and costs immediately.

10. With the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

dss

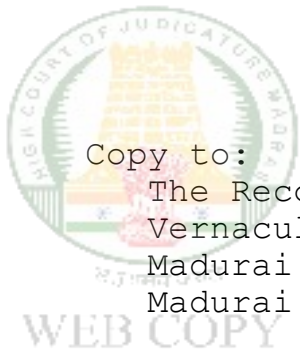
Note:

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

1. Motor Accident Claims Tribunal cum Chief Judicial Magistrate
Court, Tirunelveli.

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



Copy to:
The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

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