



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED : 21.12.2020

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.975 of 2010

and

MP(MD)No.1 of 2010

The Divisional Manager,
United India Insurance Company Limited,
T.V.S Buildings,
West Veli Street,
Madurai-1.

... Appellant/2nd Respondent

vs.

1.R.Rajkumar Samuel

... 1st Respondent / Petitioner

2.A.Silathu

... 2nd Respondent / 1st Respondent

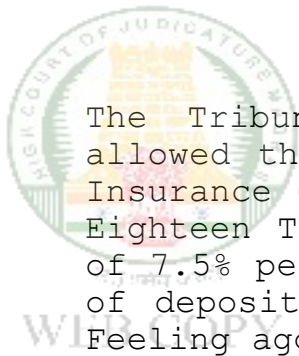
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.1389 of 2001 dated 13.07.2009 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Madurai.

For Appellant	: Mr.J.S.Murali
For R1	: Dismissed vide order dated 29.11.2017
For R2	: No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accidents Claims Tribunal, Principal Subordinate Court, Madurai in M.C.O.P.No.1389 of 2001 dated 13.07.2009.

2. The 1st respondent herein has filed a claim petition in M.C.O.P.No.1389 of 2001 on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Madurai under Sections 140, 166 & 182 A of the Motor Vehicles Act, claiming a sum of Rs.5,00,000/- for the injuries sustained by him in a Motor accident.



The Tribunal, by the order/award dated 13.07.2009, has partly allowed the said claim petition and directed the 2nd respondent / Insurance Company to pay a sum of Rs.1,18,900/- (Rupees One Lakh Eighteen Thousand and Nine Hundred Only) with interest at the rate of 7.5% per annum from the date of filing of petition till the date of deposit (excluding the period of default of petition, if any). Feeling aggrieved, the 2nd respondent/Insurance Company has filed the present Civil Miscellaneous Appeal.

3. The case of the claimant before the Tribunal:-

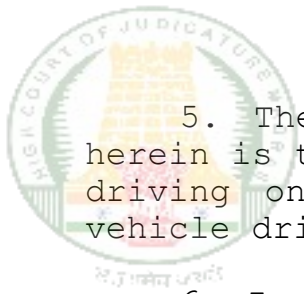
(i) On 09.07.1999, at about 09.30 a.m, the petitioner was riding his two wheeler bearing Registration No.TN-65-G-0153 from Madurai - Rameswaram Main Road, when he was nearing Paramakudi, Guru Theatre, the Tractor bearing Registration No. TN-65-A-2093 along with Trailer bearing Registration No. TN-65-A-2094 was driven by its driver in a rash and negligent manner and dashed against the petitioner. As a result of which, he sustained both bones fracture in the left leg, fracture of proximal phalynx middle finger and other multiple injuries. After the incident, the petitioner was admitted in Government hospital, Paramakudi and thereafter he was shifted to Government Rajaji Hospital, Madurai and the petitioner was not able to walk freely and attend to his routine work.

(ii) With regard to the aforesaid accident, a complaint was lodged before the Paramakudi Town Police Station, Paramakudi, and based on the same, First Information Report has been registered in Crime No.393/1999 for the offences under Sections 279, 337 and 338 IPC against the driver of the Tractor namely the 1st respondent and after investigation, a charge sheet has been filed and the case is pending before the Jurisdiction Magistrate, Paramakudi.

(iii) At the time of accident the injured was hale and healthy and he was aged about 33 years and he was working as Sub Inspector of Police, and he was getting monthly salary of Rs.8,160/- and he spent the entire income to his family. Due to the said accident, the petitioner is not able to attend his job and he is not able to attend his regular activities and hence, the petitioner claimed Rs.3,00,000/- as compensation.

(iv) At the time of accident, the Tractor belonging to the first respondent was driven by him and the said Tractor was duly insured with the second respondent and hence, the respondents 1 and 2 are jointly and severally liable to pay compensation.

4. The respondent 1 remains ex-parte before the Tribunal. The second respondent / Insurance Company alone contesting the claim petition by filing counter statements.



5. The case of the second respondent, who is the appellant herein is that the accident took place due to the rash and negligent driving on the part of the petitioner and the first respondent vehicle driver was no way responsible and other things were denied.

6. In the enquiry, on the side of the petitioner / claimant 3 witnesses were examined and 22 documents marked. On the side of the respondents 3 witnesses were examined and 5 document marked.

7. 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 vehicle driver and awarded a sum of Rs.1,18,900/- (Rupees One Lakh Eighteen Thousand and Nine Hundred Only) as compensation. The learned Tribunal has also directed the 2nd respondent/Insurance Company to pay interest for the aforesaid amount at the rate of 7.5% per annum from the date of filing of petition till the date of deposit and also directed the 2nd respondent/Insurance Company to pay the costs to the petitioner.

8. Against which, the appellant / second respondent has preferred this Civil Miscellaneous Appeal mainly on the ground that there was a policy violation by the first respondent. Since the vehicle, which was insured for agricultural purpose, had been used for commercial purpose, the appellant must be exonerated from the liability and the owner must be directed to pay the compensation.

9. At the time of the hearing, it is brought to the notice of this Court, the claimant, who is the first respondent herein, has filed a separate appeal for enhancement of compensation in CMA.(MD) No.73 of 2010. Probably that is the earlier appeal and subsequent to that only the Insurance Company has filed this appeal. CMA.(MD)No.73 of 2010 was referred to Lok Adlat, which was conducted at 10.12.2010 and in that, a compromise was reached between the appellant herein and the respondent, by which, the compensation was raised Rs.60,000/- in addition to the award passed by the Tribunal. So, the claimant appeal has ended in compromise and nothing survives in this appeal.

10. The learned counsel for the appellant would submit that since, there was a violation of the policy, pay and recovery ought to have been ordered by the Tribunal, but it failed to do so and so, prayed this Court to pass such an order. This plea of the learned counsel for the appellant cannot be accepted, for the simple reason that in CMA.(MD)No.73 of 2010, filed by the claimant, the compensation amount itself was raised and no plea was taken by the appellant herein / Insurance Company that pay and recovery ought to have been ordered. Therefore, no such order can be passed in this appeal, if passed, it will amount to conflicting order. So, this Court find that the appeal is liable to be dismissed.



11. In view of the compromise, reached between the parties in CMA.(MD)No.73 of 2010 dated 10.12.2010, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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 Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurai.

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

+1cc to Mr.J.S.Murali, Advocate, SR.No. 27114.

**JUDGMENT MADE IN
C.M.A(MD) No.975 of 2010
and
MP(MD)No.1 of 2010
21.12.2020**

SR(CO)
CS(21.01.2021) 4P 5C