



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.02.2020

CORAM:

THE HONOURABLE Mrs. JUSTICE R.THARANI

C.M.A.(MD).No.342 of 2013

and

M.P.(MD)No.1 of 2013

The Oriental Insurance Co.Ltd.,
Divisional Office,
Madurai.

... Appellant/2nd Respondent

Vs.

1.T.S.Bhuvaneswari

... 1st Respondents/ Petitioner

2.A.Angiah

... 2nd Respondent/1st Respondent

PRAYER: This appeal has been filed under Section 173 of M.V. Act, 1988, against the judgment and decree passed in M.C.O.P.No.840 of 2002 dated 18.11.2005 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Judge cum Fast Track Court No.1, Madurai.

For Appellant : Mr.C.Jawaharavindran

For Respondents : No Appearance

JUDGMENT

This petition has been filed against the award granted in M.C.O.P.No.840 of 2002 dated 18.11.2005 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Judge cum Fast Track Court NO.1, Madurai.

2.The appellant is the Insurance Company. The first respondent is the claimant and the second respondent is the first respondent in M.C.O.P.

3.The first respondent filed a petition in M.C.O.P.No.840 of 2002 against the respondent for the prayer of compensation of Rs.1,00,000/-. The Tribunal awarded a sum of Rs.33,000/- as compensation. Against which, the appellant/Insurance Company

<https://hccse.courts.gov.in/hccse> served as respondent in this appeal.



4.The brief substance of the claimants is as follows:-

On 08.11.2001, the petitioner and her husband T.K.Sivakumar, were travelling in an auto rickshaw that belongs to the first respondent bearing Reg.No.TME-304 from Solaiyalagupuram, Madurai, to Prasanna Colony, Avaniapuram, Madurai. The driver of the vehicle drove the vehicle in a rash and negligent manner. At about 2.30 p.m, the vehicle dashed against a lorry that came from the opposite direction. The petitioner sustained grievous injuries on his right leg and multiple injuries all over the body. Since, the bones did not joint properly, the petitioner was not able to sit or stand properly. The petitioner was earning a sum of Rs.3,000/- per month by spinning yarn at home. There was income loss to the family of the petitioner. The petitioner suffered injuries, pain and other loss.

5.After considering both sides, the Tribunal awarded a sum of Rs.33,000/- as a compensation. Against which, the appellant preferred this appeal on the following grounds:-

The accident occurred only due to the rash and negligent driving of the lorry driver. The auto rickshaw driver is not at all responsible for the accident. The Tribunal failed to consider the contention in the FIR. The police complaint was given by the claimant against the auto driver. After hitting the auto rickshaw, the lorry flew away from the place of accident and the accident happened only due to the rash and negligent driving of the lorry driver. No independent occurrence witness was examined. Ex.P.1/FIR did not mention the lorry number and the name of the lorry driver. Hence, Ex.P.1/FIR is not an acceptable document. Already, the appellant has deposited the award amount before the Tribunal.

6.On the side of the respondent, it is stated that the award is only a meagre amount and the injuries of the claimants were proved through Ex.P.2 to Ex.P.5.

7.It is seen that an FIR was lodged against the auto driver and the FIR was marked as Ex.P.1. P.W.1 deposed that the lorry, which came from the opposite direction was driven by the driver in a rash and negligent manner and caused the accident. There is no other independent rebuttal evidence to disprove the evidence of P.W.1. R.W.1 is an employee of the appellant and his evidence is not sufficient enough to prove the case of the appellant. Therefore, the Trial Court is right in fixing the liability upon the Insurance company.

8.The doctor, who has issued the disability certificate, was examined as P.W.2. X-ray was marked as Ex.P.3 and the Case



Sheet was marked as Ex.P.4 and the wound certificate was marked as Ex.P.5 and P.W.2 fixed the disability as 28 % and has issued disability certificate. From the evidence of P.W.2 and from Ex.P.2 to Ex.P5, it is clear that the claimant has sustained injuries in the accident and the claimant has 28 % disability. There is no rebuttal evidence on the side of the appellant to disprove the disability certificate or to disprove the injuries. The claimant was awarded a sum of Rs.28,000/- towards the disability and was awarded a sum of Rs.5,000/- towards pain and suffering by the Tribunal. In the above circumstances, the award passed by the Tribunal is appropriate for the injuries sustained by the claimant.

9. There is nothing sufficient enough to interfere in the order of the Tribunal. Hence, the order passed by the Tribunal in M.C.O.P.No.840 of 2002 dated 18.11.2005 on the file of the Motor Accident Claims Tribunal cum Additional District and Sessions Judge cum Fast Track Court No.1, Madurai, is hereby confirmed and the civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10. The appellant / Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit along with cost, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant / first respondent herein is permitted to withdraw the amount after deducting amount, if any, already received by her.

Sd/-

Assistant Registrar (CS-II)

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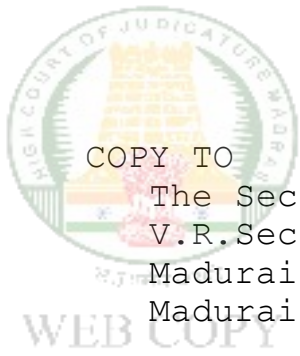
Sub Assistant Registrar (CS)

dss

To

The Additional District and Sessions Judge cum
Fast Track Court No.1,
Motor Accident Claims Tribunal
Madurai.

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



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V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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and
M.P. (MD) No.1 of 2013
19.02.2020**

KM (10.07.2020) 4P 4C