



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.1896 of 2020
and C.M.P.No.14044 of 2020

M/s. Cholamandalam Ms General
Insurance Company Limited,
Travancore Bank Upstairs,
Lakshmi Vilas Bus Stop,
Permanur, Salem 7.

..Appellant/2nd Respondent

Vs.

1.M. Ravichandran

..1st Respondent/Petitioner

2.P. Venkatesan

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.07.2019, made in M.C.O.P. No.1641 of 2014, on the file of the Special Sub Court-II, (Motor Accident Claims Tribunal), Salem.

For Appellant : Mr.J. Michael Visuvasam

For Respondents: Mr.T.M.Karthikeyan (For R1)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 16.07.2019, made in M.C.O.P. No.1641 of 2014, on the file of the Special Sub Court-II, (Motor Accident Claims Tribunal), Salem.

2.The appellant is the 2nd respondent in M.C.O.P. No.1641 of 2014, on the file of the Special Sub Court-II, (Motor Accident Claims Tribunal), Salem. The 1st respondent/claimant filed the said claim petition, claiming a sum of Rs.15,00,000/- as



compensation for the injuries sustained by him in the accident that took place on 05.07.2014.

3. According to the 1st respondent, on the date of accident, he was driving his TATA Ace bearing Registration No. TN-54-B-0914 on Salem-Harur main road, following all the traffic rules and regulations. At about 16.30 hours, while proceeding near H. Thottampatty Bus stand, 2nd respondent, driver-cum-owner of the Van bearing Registration No. TN-24-M-7656 driving the same in opposite direction, in a rash and negligent manner, dashed against the TATA Ace driven by the 1st respondent and caused the accident. The accident occurred only due to rash and negligent driving by the 2nd respondent, driver-cum-owner of the Van. Hence, the 1st respondent filed the claim petition claiming compensation against the 2nd respondent as owner-cum-driver and appellant as insurer of the said vehicle.

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident is a collision of TATA Ace driven by the 1st respondent and Van driven by the 2nd respondent. The accident occurred due to negligence of the 1st respondent, FIR and Charge sheet has been filed against him. The 1st respondent has pleaded guilty in the Criminal Court. The 1st respondent is admittedly a tort-feasor. The claim petition filed by a 'tort feasor' under Section 166 of the Motor Vehicles Act is not maintainable. The 1st respondent ought to have claimed compensation against his own insurer and not against the insurer of the other vehicle. In any event, the 1st respondent has to prove that he possessed valid driving license to ply the vehicle at the time of accident. The 1st respondent also has to prove his age, avocation and income, manner of accident, injuries sustained and treatment taken to claim compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, examined eye witness as P.W.2 and marked 5 documents as Exs. P1 to P5. The appellant examined Special Sub-Inspector of Police, Harur Police Station as R.W.1, but did not let in any evidence. Two documents were marked as Exs. W1 and W2. The Disability Certificate issued by the Medical Board was marked as Court Document viz., Ex. C1.



7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by 2nd respondent, driver-cum-owner of the Van and directed the appellant as insurer of the said vehicle to pay a sum of Rs.1,79,000/- as compensation to the 1st respondent.

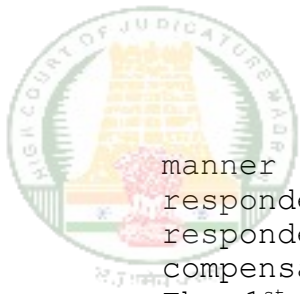
8.Challenging the liability fastened on them and questioning the quantum of compensation granted by the Tribunal in the award dated 16.07.2019, made in M.C.O.P. No.1641 of 2014, the appellant - Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant-Insurance Company contended that the accident occurred only due to rash and negligent driving by the 1st respondent, FIR was registered only against the 1st respondent and charge sheet was laid against him. He pleaded guilty and paid fine. Hence, the appellant is not liable to pay compensation for the negligence of tort-feasor. The appellant examined the Special Sub-Inspector of Police as R.W.1, who deposed that final report was filed against the 1st respondent. The Tribunal failed to consider the evidence of R.W.1, FIR, final report and erroneously directed the appellant to pay compensation. R.W.1 deposed based on Police records and he cannot have any vested interest against the 1st respondent. The Tribunal brushed aside the evidence of R.W.1. P.W.2 is a cooked up witness. The Tribunal erroneously relied on the evidence of P.W.2 and held that accident occurred only due to rash and negligent driving by 2nd respondent, driver-cum-owner of the Van. The amounts awarded by the Tribunal towards loss of amenities and pain and suffering are exorbitant and unjustified. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal.

11.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent/caveator and perused the materials available on record.

12.It is the contention of the 1st respondent that while he was driving TATA Ace vehicle carefully, 2nd respondent, driver-cum-owner of the Van drove the same in a rash and negligent



manner and dashed against the TATA Ace driven by the 1st respondent and caused accident. In the accident, the 1st respondent sustained injuries and filed claim petition, claiming compensation for the injuries sustained by him in the accident. The 1st respondent examined himself as P.W.1 and marked FIR. He also examined P.W.2 - eye witness. P.W.2 also deposed as that of averments in the claim petition and evidence of P.W.1. On the other hand, it is the contention of the appellant that accident occurred only due to rash and negligent driving by the 1st respondent and he is the tort-feasor. FIR is registered against the 1st respondent, charge sheet laid against him, he pleaded guilty and paid fine. To substantiate their contention, the appellant examined the Special Sub-Inspector of Police as R.W.1. R.W.1 deposed that he is not personally aware of the fact and he is giving evidence based on the records. Even though R.W.1 has deposed that 1st respondent has pleaded guilty in the criminal proceedings and paid fine, he has not produced any materials to substantiate the same. The contention of the learned counsel appearing for the appellant that R.W.1 has no vested interest and he deposed based on Police records and Tribunal ought to have accepted the evidence of R.W.1 is not acceptable. R.W.1 has not produced any materials to show that 1st respondent pleaded guilty and paid fine. R.W.1 has not produced judgment in the criminal proceedings or receipt to prove the payment of fine by the 1st respondent, before concerned Magistrate. The contents of FIR and criminal proceedings are not sole basis for fixing negligence. In the present case, the appellant has not examined the driver of the Van or any eye-witness to prove their case. The contention of the learned counsel appearing for the appellant that P.W.2 is a cooked up witness is not supported by any materials. The Tribunal considering the above materials, has held that 2nd respondent, driver-cum-owner of the Van is responsible for the accident and fixed liability on the appellant, as insurer of the Van. There is no error in the said finding of the Tribunal, warranting interference by this Court.

13.As far as the quantum of compensation is concerned, the Tribunal considering the nature of injuries, disability suffered, period of treatment taken, age, avocation and income of the appellant, has awarded compensation, which is not excessive. There is no error in the award of the Tribunal warranting interference by this Court.

14.In the result, this Civil Miscellaneous Appeal is dismissed and the amount awarded by the Tribunal at Rs.1,79,000 /- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, excluding the period of dismissed for default from 10.02.2017 to 25.09.2018, is confirmed. The appellant-Insurance Company is



directed to deposit the award amount along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.1641 of 2014. On such deposit, the 1st respondent is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Special Subordinate Judge-II,
(Motor Accident Claims Tribunal),
Salem.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1 CC to Mr.J. Michael Visuvasam, Advocate sr 1807.

C.M.A. No.1896 of 2020

VBA(CO)
SP(01/09/2021)