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C.M.A(MD)No.1012 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.1012 of 2013

and

C.M.P. (MD)No.6683 of 2021

Devi Perachi

... Appellant / Petitioner

Vs.

1.Shanmugavel

2.The Branch Manager,

Royal Sundaram Alliance Insurance Co. Ltd.,

No.46, Whites Road, Chennai.

3.The Managing Director,

Tamil Nadu State Transport Corporation Ltd.,

Bye Pass Road, Madurai.

...Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.165 of 2010, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Tirunelveli, dated 09.07.2012.

For Appellant

: Mr.T.Selvakumaran

R1

: Ex-parte

For R2

: Mr.S.Srinivasa Raghavan

For R3

: Mr.P.Prabhakaran

JUDGMENT

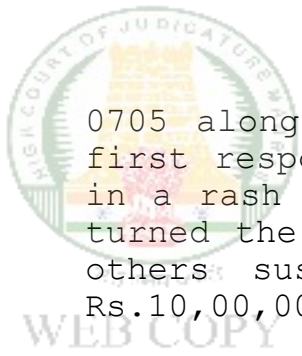
This Civil Miscellaneous Appeal is filed against the award, dated 09.07.2012, made in M.C.O.P.No.165 of 2010, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Tirunelveli.

2.The appellant herein is the claimant and the respondents herein are the respondents in the original claim petition. A common order was passed in M.C.O.P.Nos.165 of 2010, 166 of 2010 and 168 of 2010, since all the claims arise out of the same accident.

3.Brief substance of the petition, in M.C.O.P.No.165 of 2010 is as follows:

On 03.09.2009, at about 02.00 O' clock, when the petitioner and others were travelling in a bus bearing Registration No.TN-58-N-

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



0705 along the Gangaikondan - Tirunelveli Road, at that time, the first respondent's lorry bearing Registration No.TN-72-R-1874, came in a rash and negligent manner and without any indication suddenly turned the vehicle and dashed against the Bus. The petitioner and others sustained injuries. The petitioner claimed a sum of Rs.10,00,000/- as compensation.

4. Brief substance of the counter of the first respondent, in M.C.O.P.No.165 of 2010, is as follows:

The age, profession, and income of the petitioner and the manner of the accident are all denied. Only the bus driver was responsible for the accident. The lorry was insured with the second respondent and the first respondent is not liable to pay any compensation.

5. Brief substance of the counter of the second respondent, in M.C.O.P.No.165 of 2010, is as follows:

The lorry was not permitted to be driven on the occurrence area. Policy conditions are violated. The permit for the lorry was not produced for verification before the M.V.I inspection. The accident was not intimated to the second respondent by the first respondent. The first respondent lorry driver drove the vehicle in a cautious manner. It was the bus driver, who was negligent and dashed against the back side of the lorry.

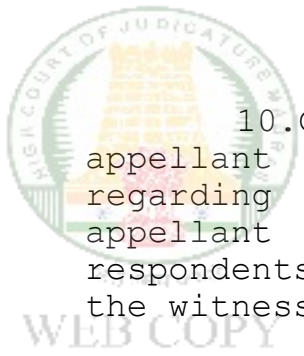
6. Brief substance of the counter of the third respondent, in M.C.O.P.No.165 of 2010, is as follows:

The petitioner has to prove the injuries, mode of treatment through necessary documents. The third respondent driver is not responsible for the accident. The negligent is only on the part of the first respondent. The third respondent is only a formal party. The claim is excessive.

7. A common trial was conducted in all the three cases. On the side of the petitioner, four witnesses were examined and twenty four documents were marked. On the side of the second respondent, two witnesses were examined and one document was marked. No document was marked on the side of the third respondent.

8. After considering both sides, the Tribunal, has awarded a sum of Rs.1,50,000/- as compensation. Against the same, the claimant / appellant has approached this Court, for enhancement of compensation.

9. On the side of the appellant, it is stated that the appellant wants to file certain documents to prove the claim. It is stated that the Insurance Company also filed an appeal against the very same award, regarding the liability.



10. On the side of the respondents, it is stated that the appellant want to mark documents regarding the profession and regarding the income and if an opportunity was given to the appellant to mark the document, it will be a prejudice to the respondents and the respondents will be deprived of cross examining the witnesses and to disprove the said documents.

11. It is seen that the appellant wants to mark the pay slip and an identity card, to prove that the complainant was working as an Assistant Executive Engineer in Tamil Nadu Generation and Distribution Corporation Limited and to mark the Pay Certificate and to prove that the appellant was moved to Selection Grade and that to fix the loss of income, these documents are necessary.

12. An opportunity for the claimant to prove his case is to be given in the interest of justice. At the same time, an opportunity for the respondents to disprove the documents has to be given.

13. Hence, this Civil Miscellaneous Appeal is allowed and the award, dated 09.07.2012, made in M.C.O.P.No.165 of 2010, on the file of the Motor Accident Claims Tribunal - Principal Sub Court, Tirunelveli, is hereby set aside and the matter is remanded back to the Tribunal for fresh consideration. The Tribunal is directed to give equal opportunity for both sides to examine additional witnesses or to re-examine the already examined witnesses and to mark documents and to cross examine the witnesses. The Tribunal is directed to dispose of the claim petition within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)

Ls

To

1. The Motor Accident Claims Tribunal -
Principal Sub Court,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)



C.M.A(MD)No.1012 of 2013

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-32392[F] dated 25/10/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-32489[F] dated 25/10/2021)

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