



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 17.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1743 of 2010

and

M.P(MD)No.3 of 2010

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Oriental Insurance Co., Ltd.,
By its Branch Manager,
73/B1 Salai Road,
Lakshmi Complex,
Thillai Nagar,
Trichy - 18.

.. Appellant/Respondent No.2

vs.

1.S.Kumar,
2.V.Subiramani

..Respondent No.1/Petitioner

..Respondent No.2/Respondent No.1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award dated 23.12.2009 made in MCOP No.1943 of 2005 on the file of the Motor Accident Claims Tribunal, III Additional Sub-Court, Trichy.

For Appellant	: Mr.K.Bhaskaran
For Respondent	: No appearance for R2
	R-1 Dismissed
	(Vide Court order dated 29/11/17)

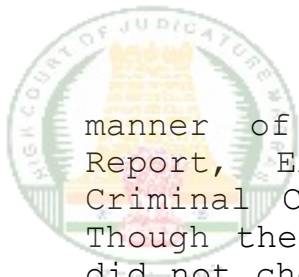
J U D G M E N T

The appellant is questioning the award passed by the Motor Accident Claims Tribunal, III Additional Sub-Court, Trichy made in MCOP No.1943 of 2005 in this appeal.

2.The first respondent filed a claim petition for compensation of Rs.2,00,000/- for the injuries sustained by him in the accident occurred on 10.01.2005. It is his case that on the said date on 10.45 a.m, when he was standing near Maruthi Hospital, which is situated along Trichy-Thennur main road, a car owned by the first respondent bearing registration No.TN-45-K-5493 insured with the appellant, hit against him. He further stated that he was 52 years old at the relevant point of time and he was earning Rs.5,000/- per month by doing business. Since the accident occurred due to the negligence of the driver of the car, he is entitled to receive compensation from the owner as well as insurer of the vehicle.

3.The age, income and liability of the insurer was disputed in the counter filed before the Tribunal.

4.The claimant gave evidence as P.W.1 and spoken about the



manner of accident in his evidence. Ex.P.1-First Information Report, Ex.P.2-Wound Certificate and Ex.P.7-Judgment of the Criminal Court were marked to corroborate the evidence of P.W.1. Though the appellant disputed the manner of the accident, but they did not choose to examine the driver of the car. It is to be noted that the driver of the car has pleaded guilty and paid fine amount. So, the finding of the Tribunal that the accident occurred due to the negligence of the driver of the car does not warrant any interference by this Court.

5.Insofar as the quantum is concerned, the claimant suffered 41% disability, which is evident from the evidence of P.W.2 and Ex.P.4, but the Tribunal has taken disability as 39% and awarded Rs.39,000/- by applying Rs.1000/- per one percentage. In addition, Rs.10,000/- for pain and suffering; Rs.5,000/- for nutrition; Rs.5,000/- for transportation; Rs.24,275/- for medical expenses as per Ex.P.6 has been awarded by the Tribunal. Since this award has been passed based on the evidence, all are reasonable. I find no reason to interfere with the award passed by the Tribunal.

6.It is opposite to mention herein that the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident. So, the Tribunal, taking note of the fact that the claimant is the third party, directed the appellant to satisfy the award amount first and thereafter, recover the same from the owner of the vehicle. The said finding is also confirmed and it can be executed by following the case of ***Oriental Insurance Co. Ltd., vs. Nanjappan and others [(2004) 13 SCC 224]***.

7.In such view of the matter, the Civil Miscellaneous Appeal fails and the same is dismissed, as devoid of merits. The appellant Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with proportionate interest and costs. The appellant shall recover the amount from the owner of the vehicle after paying compensation to the claimant. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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To

1.The Motor Accident Claims Tribunal,
III Additional Sub-Court, Trichy.

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

+1 CC to M/s.K.BHASKARAN, Advocate (SR-16401[F] dated 19/04/2021)

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KK(02.06.2021) 3P 5C