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C.M.A(MD) No.454 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 14.12.2020

DATE ON WHICH PRONOUNCED : 06.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

C.M.A(MD) No.454 of 2010

and

CMP(MD) No.9477 of 2018

M/s.The Oriental Insurance Co.Ltd.,
Through its Divisional Manager,
16, North Veli Street,
Madurai-625 001.

.. Appellant/2nd Respondent

vs.

1.Nondisamy ... 1st Respondent/ Petitioner

2.K.Murugan ... 2nd Respondent / 1st Respondent
(R2 remained ex-parte before the lower Court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the Award made in M.C.O.P.No.1601 of 2005, dated 08.12.2009, on the file of the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Madurai.

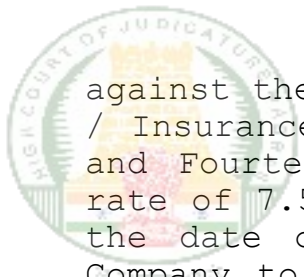
For Appellant	: Mr.K.Baskaran
For R1	: Mr.R.Venugopal
For R2	: No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the Award made in M.C.O.P.No.1601 of 2005, dated 08.12.2009, on the file of the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Madurai.

2. The 1st respondent herein has filed a claim petition in M.C.O.P.No.1601 of 2005 on the file of the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Madurai, under Sections 140, 166 (A) and 166 of the Motor Vehicles Act, claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) as compensation for the injuries sustained in a road traffic accident. The learned Tribunal, by the order/award dated 08.12.2009, has partly allowed the petition

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against the appellant / Insurance Company and directed the appellant / Insurance Company to pay a sum of Rs.1,14,000/- (Rupees One Lakh and Fourteen Thousand Only) as compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit and also directed the appellant / Insurance Company to pay costs. Feeling aggrieved, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

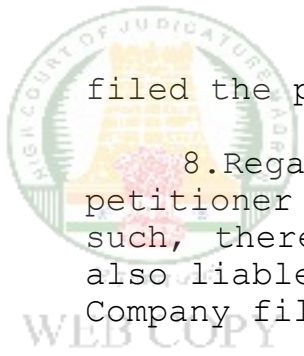
3.The case of the claimant before the Tribunal:-

On 13.04.2005, the petitioner was travelling in the Auto bearing Registration No.TN-59-U-6948 along with his goods as owner from Pullipatti to Kodikulam. At that time, the driver of the Auto, drove his vehicle in a rash and negligent manner and the Auto, which was nearing the place of occurrence lost control and capsized. As a result of which, the petitioner sustained grievous injuries. In respect of the occurrence, a case in Crime No.86 of 2005 was registered for the offences under Sections 279 and 337 IPC before the Melavalavu Police Station, Madurai District. The first respondent / petitioner took treatment in Government Rajaji Hospital as inpatient from 13.04.2005 and underwent a major surgery on 14.04.2005. He was fitted with Plates and Screws and later, he was discharged on 30.04.2005. Even after that he was taking treatment. At the time of accident, he was doing vegetable vendor and earning a sum of Rs.3,500/- per month. Because of the accidental injuries, he was not in a position to continue his work as before. Claiming a compensation amount of Rs.2,00,000/-, he approached the Tribunal. The second respondent, who is the appellant herein contended that the petitioner was not traveling along with the goods in the vehicle. Actually he returned after attending the function. The disability suffered by him is denied. Since the petitioner was traveling as a passenger in the goods vehicle, the Insurance Company is not liable to pay the amount of compensation.

4. During enquiry before the Tribunal, on the side of the petitioner / claimant, three witnesses were examined and seven documents marked. On the side of the respondents two witnesses were examined and one document marked.

5.The learned Tribunal, after considering the materials placed before it, came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent's vehicle driver.

6.Regarding the compensation, it fixed the total amount of Rs.1,14,400/- (Rupees One Lakh Fourteen Thousand and Four Hundred Only) as compensation. The learned Tribunal has also directed the appellant / Insurance Company to pay the 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 appellant / Insurance Company to pay the costs to the petitioner.



filed the present Civil Miscellaneous Appeal.

8.Regarding the liability, the Tribunal has held that the petitioner was traveling in the vehicle along with his goods and as such, there is a coverage and the appellant / Insurance Company is also liable. Challenging the said finding, the appellant / Insurance Company filed this appeal.

9. P.W.1 in the course of his evidence, stated that on 13.04.2005, he was traveling along with his goods in the goods auto bearing Registration No. TN-59-U-6948 and at that time, because of the loss of control of the vehicle, capsized.

10. Though, it is denied on the part of the Insurance Company that the petitioner was traveling along with his goods in the vehicle, it is also contended that 37 persons traveled in the vehicle. Insofar as the vehicle is concerned, it is the goods vehicle. There is no substantial proof on the part of the Insurance Company by examining the driver of the vehicle to show that 37 persons traveled in the vehicle and the petitioner also traveled as a passenger in it. R.W.1 was examined on the side of the respondent to show that the offending vehicle is a goods vehicle and only driver is permitted and seating capacity is 3 so other persons can not be permitted. R.W.1 is the one of the official from the appellant / Insurance Company. He would say that as per the investigation report, totally 6 persons were travelled in the vehicle as passenger and so, there is a violation of policy as well as Motor Vehicles Rules.

11. The Tribunal after taking into account, the evidence on the side of the petitioner as well as the respondent came to the conclusion that the petitioner traveled in the goods vehicle along with goods. P.W.1, in his own complaint given by him based on which, the criminal case was registered, in the First Information Report, it is stated that the petitioner along with other persons were returning after attending a function and at that time, they hired the auto, which capsized. Quit contra to these facts, now he has deposed before the Tribunal, as if, he was traveling along with the goods in the vehicle. But, it was not proved. But the Tribunal came to the conclusion that the petitioner traveled along with goods in the vehicle. More over, it is the contention on the part of the respondent that even if 6 or 7 persons traveled in the goods vehicle against the permitting capacity, no fundamental breach can be attributed and in support of the above contention, he would rely upon the Hon'ble Supreme Court judgment in **Lakshmi Chand Vs Oriental Insurance Company** reported in **2016 1 TN MAC 426 SC**. But here there is total violation of the Act and rules. Goods vehicle cannot carry passengers. Here they hired the vehicle for onward and return journey for attending a function. There is a finding by the Tribunal to the effect that the petitioner along with his goods traveled in the offending vehicle, I find that no reason to confirm it. P.W.1 has not even stated the kind of goods he carried in the



vehicle. So it is apparent that the fact he deposed before the tribunal, is nothing but, total concoction of the story.

12. With regard to the quantum, the Tribunal has fixed and assessed the same as Rs,1,14,000/-. The petitioner suffered fracture in the left hand fore and elbow region. Through the injury, the bone was exposing out side, he underwent surgery on 14.12.2005, implanted with plates and screws. P.W.3., Who would say that because of the fracture radius and ulna bones, even though the bones united properly, the plates and screws set available, which requires another surgery. There was a scar, because of the fracture in both the regions The movements were restricted and loss of sensation was also noted in that place. So, the petitioner also experiencing pain. So, he assessed the disability at 40%. The disability certificate was marked as Ex.P.5. So, from the evidence of P.W.3 and Medical Records produced by the petitioner, it is seen that he suffered fracture in the left hand both bones and underwent major surgery and also require further surgery for the removal of plates and screws, which were fitted. Since both the bones were fractured, movement restriction were noted. So, the assessment of the disability as 40% taken by the Tribunal. As per the judgment of this Court in **The Managing Director, Tamil Nadu State Transport Corporation, (Division-2) Ltd., Dharmapuri Vs J.Senthil Kumar** reported in **2008 (1) TN MAC 499**, awarded the compensation of **Rs.80,000/-**, on the basis of percentage at the rate of Rs.2,000/- per percentage. It was added with the conventional amounts of Pain and Suffering, Extra Nourishment, Attendant Expenses and Transport and awarded a total compensation amount of **Rs.1,14,000/-** with 7.5% interest and costs.

13. Considering the nature of disability suffered by the petitioner, I find that, it is just and reasonable, which requires no interference at the hands of this Court. So, quantum fixed by the Tribunal is confirmed. But regarding the liability as I stated earlier the insurance company is not liable as the petitioner was a gratuitous passenger in the goods vehicle.

14. In view of the same, the award passed by the Motor Accidents Claims Tribunal cum III Additional Sub Judge, Madurai in M.C.O.P.No.1601 of 2005, dated 08.12.2009, is required to be modified and the owner of the vehicle namely the second respondent herein is only liable and the appellant is discharged from the liability.

15. Accordingly, this Civil Miscellaneous Appeal is allowed partly. The award against the appellant is set aside and the second respondent is directed to pay the entire compensation with interest as awarded by the tribunal and cost and directed to deposit the same within 2 months from the date receipt of copy of this Judgment. On such deposit being made, the petitioner is permitted to withdraw the same immediately. The deposit made by the appellant is permitted to



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be withdrawn by it. No costs.
miscellaneous petition is closed.

Consequently, connected civil

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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

1.The Motor Accidents Claims Tribunal
cum III Additional Sub Judge,
Madurai.

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

COPY TO
K.MURUGAN,
S/O.KARUPPANAN
4/90,VELUCHAMY PILLAI COMPUND,
THIRUVALLUVAR STREET,
UTHANGUDI, MADURAI NORTH TALUK

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-512[F] dated 07/01/2021)

+1 CC to M/s.K.BHASKARAN, Advocate (SR-360[F] dated 06/01/2021)

JUDGMENT MADE IN
C.M.A(MD) No.454 of 2010
and
CMP(MD)No.9477 of 2018
06.01.2021

SGS(CO)
KK(04.02.2021) 5P 7C