



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 23.12.2020

DATE ON WHICH PRONOUNCED : 06.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A(MD) No.601 of 2010

and

MP(MD)No.1 of 2010

WEB COPY

The Divisional Manager,
The New India Assurance Company Limited,
No.242-B, Kamarajar Salai,
Madurai. ... Appellant/2nd Respondent

vs.

1.Joseph Rathinasamy ... Respondent / Petitioner

2.M.Mani ... Respondent / 1st Respondent

[The second respondent herein was the first respondent before the Tribunal and he remained ex-parte before the Tribunal. Hence, summons to the second respondent may be dispensed with]

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree in M.C.O.P.No.1086 of 2002 dated 25.07.2006 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Madurai.

For Appellant	:	Mr.Sankar Sekar for M/s.B.Vijay Karthikeyan,
For R1	:	Mr.Liakat Ali for Mr.S.Ramesh @ Ramiah
For R2	:	Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the second respondent / Insurance Company against the order/award passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Madurai, in M.C.O.P.No.1086 of 2002 dated 25.07.2006.

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

On 08.09.2001, the petitioner was driving a Mini Lorry TATA 407 vehicle bearing registration number TN 59 E 5670. On 08.09.2001, at about 1.40 p.m., from Madurai to Theni at that time, a lorry bearing registration number TN 38 J 6747 was driven by its driver in a rash and negligence manner from south to north direction and hit the van. As a result of which, the vehicle got damaged. The total damage was estimated at Rs.78,167.20/- and there was loss of income also. Claiming compensation amount of Rs.1,53,167.20/-, the petitioner



approached the Tribunal.

3. The case of the appellant/2nd respondent is that the manner of the accident as mentioned in the petition is denied. Only the petitioner drove his vehicle in a rash and negligence manner and came in uncontrollable speed and dashed against the vehicle on the right side and so, the respondent is not liable to pay the amount.

4. Before the Tribunal, on the side of the petitioner, 3 witnesses were examined, 9 documents marked. On the side of the respondent, one witness was examined and 5 documents were marked. At the conclusion of the enquiry, the Tribunal came to the conclusion that the accident took place only due to the rash and negligent driving on the part of the first respondent vehicle driver.

5. Regarding the compensation for damages, by deducting the amount paid by the insurance company of the petitioner, awarded a sum of Rs.32,160/- with 7.5% interest and cost. Challenging the same, the insurance company filed this appeal mainly on the ground that since the claimant received compensation from his insurance company, no second claim will lie against the offending vehicle and further contention is that without proper appreciation, the Tribunal assessed the same as Rs.32,160/-. At the time of argument, a contention was placed that no survey report was marked with regard to the damage suffered by the petitioner's vehicle and according to the respondent, there is a difference between compensation to be paid by the tortfeasor and the damages to be paid by the insurance company of the damaged vehicle. In case of own damage claim, insurance company will calculate the same by taking into account the depreciation etc., but, in case of the third party damage, no such depreciation will be allowed, is a well settled position.

6. So this is a well settled position of law that the owner can claim the difference between the settlement by his insurance company and the balance amount. So the contention on the part of the appellant that insurance company of the offending vehicle is not responsible to pay any balance amount is not well placed.

But a mistake has been committed by stating the Branch of the Insurance company as Madurai. But the Branch office of insurer of offending vehicle is Coimbatore. But, however, company is same.

7. The Tribunal on the basis of the Ex-R5 has agreed that insurance company has paid Rs.32,160/-. The assessment made by the insurance company, a chart is marked as Ex-R4 by calculating the assessment amount and deducting the salvage etc., has paid a sum of Rs.32,160/-. The claimant has produced a bill to the value of Rs.82,141.50/-. The amount paid by the insurance company is Rs.32,160/-, so the balance amount comes to Rs.49,981.50/-. But, the Tribunal has calculated the same as Rs.32,160/-. It appears that the insurance company, is also the insurer for the vehicle



owned by the claimant, but whatever it may be, there is some miscalculation. The amount mentioned in Ex-R4 is the liability incurred by the insurance company of Madurai Branch in respect of the vehicle insured by the claimant with the insurance company.

8. As I mentioned earlier, this amount was already paid by the insurance company. So, the balance amount as I mentioned comes to Rs.49,981/-. But, there is no counter claim by the claimant. However, since it is a calculation mistake committed by the Tribunal, the award can be modified to Rs.49,981/- with 7.5% interest.

9. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed. Damages is enhanced to Rs.49,981/- with 7.5% interest from the date of petition. The appellant shall deposit the balance amount within two months from the date of receipt of a copy of this order. On deposit, the claimant can withdraw entire amount with cost and interest.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Chief Judicial Magistrate
Motor Accidents Claims Tribunal,
Madurai.
- 2.The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A (MD) No.601 of 2010
06.01.2021

KM(CO)

KB(18.02.2021) 3P 4C

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