



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 22.12.2020

DATE ON WHICH PRONOUNCED :21.01.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A. (MD) .No.673 of 2010

and

MP(MD)No.2 of 2010

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The Branch Manager,
New India Assurance Co.Ltd.,
Palani.

: Appellant /2nd Respondent

Vs.

1.K.Dhandapani

: 1st Respondent/Petitioner

2.R.Sekar

: 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 09.07.2009 passed in M.A.C.O.P.No.145 of 2002, on the file of the Motor Accidents Claims Tribunal (Sub Court), Palani.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 : Mr.D.Venkatesh
for Mr.Adithyavijayabala

For R2 : No Appearance

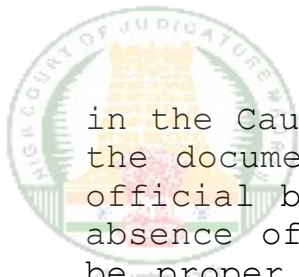
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 09.07.2009 passed in M.A.C.O.P.No.145 of 2002, on the file of the Motor Accidents Claims Tribunal (Sub Court), Palani.

2.The case of the petitioner/claimant before the Tribunal is that on 09.02.2002, at about 09.00 p.m., the petitioner was riding his two wheeler from Oddanchatram to Vadakadu. When he was nearing the place of occurrence, a Tempo Van bearing Registration No.TN-39-A-4244 driven by its driver in a rash and negligent manner dashed against the petitioner, as a result of which, he was thrown away from his two wheeler. He was admitted in the hospital for a period of 25 days and even after discharge, he was taking treatment. In respect of the occurrence, a case in Crime No.130 of 2002 was registered on the file of the Oddanchatram Police

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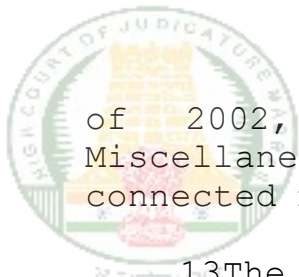


in the Causality Ward. So, it is seen that he is not the author of the document. Even though, it has been recorded in the course of official business of the hospital by the concerned Doctor, in the absence of examination of the author of the document, it may not be proper on the part of this Court to rely upon to this note. After, taking first aid treatment, he was immediately referred to Ganga Hospital, Coimbatore, i.e., on 10.02.2002 itself and at that time, there is a note by the admitting Doctor that the petitioner was involved in a road accident and hit by a Mini Van, which was coming in the opposite direction. So, the contention on the part of the appellant that the note in Ex.R.1 is genuine and note in Ex.A.5 is not, should not be accepted. No doubt, there are contradictions with regard to the manner of the accident. As mentioned earlier, after sustaining grievous injury, he remained in unconscious throughout the night in the place of occurrence. So, there is every possibility of some misinformation about the occurrence.

10.Ex.P.1 is the First Information Report, registered on the basis of complaint given by one Kalimuthu, who is the father of the petitioner/claimant. According to him, the occurrence was informed by the petitioner/claimant to him through one Chellamuthu and on receiving the information, they went to the place of occurrence and brought the petitioner to the hospital. Even though, there is a delay of four days, as mentioned earlier, the spinal card of the petitioner was severely damaged and was taken to Ganga Hospital, Coimbatore immediately. So, in those circumstances, the delay in giving the complaint, cannot be taken as creating doubt. Moreover, in a case of serious doubt about the accident, the Insurance Company used to appoint Investigator, to enquire the occurrence. It appears that, no such attempt was made by the Insurance Company. So, the contention on the part of the appellant that the accident is doubtful cannot be accepted. The Tribunal has given valid reason for arriving at such a conclusion. So, I find no reason to differ from the finding.

11.Regarding the quantum by taking into account the evidence of P.W.2, the Doctor, who assessed the disability of the petitioner, fixed Rs.1,000/- per percentage and awarded a sum of Rs.60,000/- for 60% disability. To this, the other conventional charges were added. Together with medical bills and cost of further surgery. Perusal of medical records, such as, Ex.P.5, Ex.P.9, Ex.P.11 and Ex.P.13 shows that the petitioner took treatment for a prolonged period. So, in such a circumstance, this Court find that the award passed by the Tribunal is reasonable and this Court find no reason to reduce the same.

12.In the result, the award passed by the Motor Accident Claims Tribunal, (Sub Court), Palani, passed in M.A.C.O.P.No.145



of 2002, dated 09.07.2009, is confirmed and the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13The appellant is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and cost within a period of two months from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the first respondent / claimant is permitted to withdraw the amount after deducting amount, if any, already received by him. The claimant is not entitled for interest for the default period, if there is any default.

Sd/-

Assistant Registrar (CS-I)

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/ /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 (Sub Court),
Palani.
- 2.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

Judgment made in
C.M.A. (MD) .No.673 of 2010
and MP(MD) No.2 of 2010
21.01.2021

pm (CO)

TR(25.02.2021) 4P 4C