WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 08.04.2021
Delivered On : 17.04.2021
CORAM
THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.819 of 2013
and
M.P.(MD)No.3 of 2013

Oriental Insurance Co. Ltd.,
Divisional Office NO.2,
15, North Veli Veethi,
K.J.R.Complex,
Madurai – 625 001. ..Appellant

Vs.

1.D.Raju
2.Thirumalai .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 12.10.2011 made in M.C.O.P.No.1087 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Madurai.

For Appellant : Mr.K.Baskaran
For 2nd Respondent : Mr.Mr.Thirumalai
For 1st Respondent : Died

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.1087 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Madurai.

2.The appellant is the first respondent, the first respondent is the claimant and the second respondent is the owner of the vehicle in the claim petition. The first respondent has filed a claim petition in M.C.O.P.No.1087 of 2008, claiming compensation for the injuries sustained by him in an accident that took place on 02.10.2006. The Tribunal has awarded a sum of Rs.2,13,747/- (Rupees Two Lakhs Thirteen Thousand Seven Hundred and Forty Seven only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.1087 of 2008 is as follows:

On 02.10.2006 at about 10 a.m., when the claimant was riding his motorcycle bearing registration No.TN-58-A-6649 along with Theni-Madurai Main Road observing all the road rules, another two wheeler bearing registration No.TN-59-Q-1015 dashed against the

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

WEB COPY

claimant's vehicle and caused him grievous injuries. The claimant was aged about 60 years. After his retirement, he was doing real estate business and was earning Rs.20,538/- (Rupees Twenty Thousand Five Hundrend and Thirty Eight only) and the claimant claimed a sum of Rs.5,90,000/- (Rupees Five Lakhs and Ninety Thousand only) as compensation.

4.The brief substance of the counter filed by the appellant/second respondent is as follows:

The accident occurred due to the rash and negligent driving of the claimant. But a false complaint was lodged against the second respondent/first respondent. The driver of the vehicle was not having valid driving licence at the time of accident. The appellant/second respondent is not liable to pay any compensation to the claimant.

5.After trial, the Tribunal has awarded a sum of Rs.2,13,747/- (Rupees Two Lakhs Thirteen Thousand Seven Hundred and Forty Seven only) as compensation.

6.On the side of the appellant, it is stated that the entire negligence is not on the part of the driver of the motorcycle bearing Registration No.TN-59-Q-1015. The Tribunal failed to consider that there was contributory negligence on the part of the claimant. There was violation of policy conditions. The insurance company is not liable and prayed the appeal to be allowed.

7.It is seen that the claimant has examined three witnesses. Ex.P1 is the copy of the FIR, Ex.P2 is the copy of the chargesheet and Ex.P3 is the M.V. Report. The evidence of P.W.2 and Ex.P1 to Ex.P3 proves the involvement of the vehicle in the accident. There is no evidence sufficient enough to prove contributory negligence.

8.The evidence of R.W.1 and R.W.2 reveals that the driver was not having driving licence at the time of accident. Since there was violation of policy conditions, the Tribunal has directed the insurance company to pay the claimant and to recover from the owner of the vehicle.

9.The medical certificate and the wound certificate and X ray proves that the claimant sustained grievous injury. Ex.P5 to Ex.P10 are the medical bills. The Tribunal has awarded a sum of Rs.48,000/- (Rupees Forty Eight Thousand only) towards permanent disability and Rs.15,000/- (Rupees Fifteen Thousand only) towards pain and suffering and Rs.5,000/- (Rupees Five Thousand only) towards nutrition and Rs.1,40,747/- (Rupees One Lakh Forty Thousand Seven Hundred and Forty Seven only) towards medical expenses. The amount fixed by the Tribunal under each head is reasonable.

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

WEB COPY

10.As discussed above the award passed by the Tribunal is reasonable and there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.1087 of 2008 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Madurai. Hence, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Motor Accidents Claims Tribunal, Principal Sub Court, Madurai.

2.The Section Officer,(2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BHASKARAN, Advocate (SR-16402[F] dated 19/04/2021)

C.M.A.(MD)No.819 of 2013
17.04.2021

KB(09.06.2021) 3P 5C

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