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C.M.A(MD)No.1239 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2021

Delivered on : 27.08.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

C.M.A(MD) No.1239 of 2014

and M.P.(MD)No.3 of 2014

National Insurance Company Limited,
Through its Branch Manager,
No.92, Devarpuram Road,
Tuticorin.

... Appellant/2nd Respondent

Vs.

1.Kirubakaran
2.Muruganandam

...1st Respondent/Petitioner

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.354 of 2010, dated 20.11.2013, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Court, Tirunelveli.

For Appellant	: Mr.J.S.Murali
For R1	: Mr.G.Venugopal
For R2	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award in M.C.O.P.No.354 of 2010, dated 20.11.2013, on the file of the Motor Accidents Claims Tribunal - Additional Subordinate Court, Tirunelveli.

2.The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the M.C.O.P petition.

3.Brief substance of the petition in M.C.O.P.No.354 of 2010 is as follows:-

On 23.02.2009, at about 02.45 p.m., one Balasubramanian was riding a two wheeler and the petitioner was travelling as a pillion rider, at that time, a lorry bearing Registration No.TN-69-A-1161 was driven by its driver in a rash and negligent manner came from the opposite direction, dashed against the motorcycle. The petitioner and the rider of the two wheeler sustained injuries and the petitioner claimed a sum of Rs.5,00,000/- as compensation.

4.Brief substance of the counter filed by the first respondent in M.C.O.P.No.354 of 2010 is as follows:-

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The age, income, profession of the petitioner are to be proved. The accident took place due to the negligent driving of the petitioner. The driver of the two wheeler was not having valid driving licence and the vehicle was insured with the second respondent. The first respondent is not liable to pay compensation.

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5. Brief substance of the counter filed by the second respondent in M.C.O.P.No.354 of 2010 is as follows:-

The lorry driver is not responsible for the accident. The rider of the two wheeler drove the vehicle in a rash and negligent manner, without observing a big stone on the middle of the road and he hit against the stone. The lorry driver stopped the vehicle and helped the injured. The first respondent driver was not responsible for the accident and the second respondent is not liable to pay any compensation.

6. On the side of the petitioner, two witnesses were examined and ten documents were marked. On the side of the respondents, two witnesses were examined and two documents were marked.

7. The trial Court, after considering both sides, awarded a sum of Rs.1,94,970/- as compensation for the claimant. Against that award, the appellant has approached this Court, by way of this Civil Miscellaneous Appeal.

8. On the side of the appellant, it is stated that the lorry bearing Registration No.TN-69-A-1161 was not at all involved in the accident. The rider of the motorcycle was rash and negligent manner, without noticing a big stone in the curved road. The claimant suppressed the true facts and lodged a false complaint against the lorry driver. In the M.V.I. report, it was mentioned that nobody was injured in the accident and there was no damage to the insured vehicle. The lorry driver was examined as R.W.1 and an official from the Insurance Company was examined as R.W.2 and the relevant documents were marked as Ex.R1 and Ex.R2. The compensation awarded is excessive and the rate of interest is exorbitant.

9. On the side of the appellant, it is further stated that R.W.1, who is the driver of the lorry, has given evidence that he helped the injured and informed their relatives that the lorry driver is not responsible for the accident.

10. On the side of the claimant, it is stated that it was the lorry, which dashed against the motorcycle. A case was registered against the lorry driver. It was false to say that the rider of the two wheeler hit a stone and fell down and the driver of the lorry helped him. Even the owner of the lorry has not denied the involvement of the lorry in his counter. R.W.1 has admitted that charge sheet was filed against the lorry driver and the case is



pending before the criminal Court.

11. Copy of the F.I.R. was marked as Ex.P1. Copy of the rough sketch was marked as Ex.P3. Copy of the charge sheet was marked as Ex.P6. Reports of the Motor Vehicle Inspector were marked as Ex.P4 and Ex.P5. From Ex.P1 and P3 to P6, it is clear that the lorry was involved in the accident and the lorry driver was responsible for the accident.

12. On the side of the appellant, it is stated that the quantum fixed by the Tribunal is excessive and the rate of interest has to be reduced. On the side of the first respondent/claimant, it is stated that there was functional disability and multiplier method has to be adopted. Wound Certificate was marked as Ex.P2. Discharge summary was marked as Ex.P7. Disability certificate was marked as Ex.P9. X-Ray was marked as Ex.P10. The Doctor, who fixed the disability, was examined as P.W.2. P.W.2 has fixed the disability at 38%. The Tribunal has awarded a sum of Rs.2,000/- for each percentage of the disability. The accident took place on 23.02.2009, hence, the fixation of compensation for the disability is reasonable. Considering the cost of living at the time of accident, the award granted by the Tribunal under various heads is reasonable. But, the rate of interest fixed by the Tribunal has to be reduced to 7.5%.

13. In the above circumstances, the award in M.C.O.P.No.354 of 2010, dated 20.11.2013, on the file of the Motor Accidents Claims Tribunal - Additional Subordinate Court, Tirunelveli, is modified. The rate of interest alone is reduced from 9% p.a. to 7.5% p.a..

14. In the result, this Civil Miscellaneous Appeal is partly allowed. The appellant/Insurance Company is directed to deposit the entire compensation of Rs.1,94,970/- along with interest at the rate of **7.5% p.a** from the date of petition till the date of deposit and with cost within a period of eight weeks 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 entire amount, after deducting the amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (Cs-I)

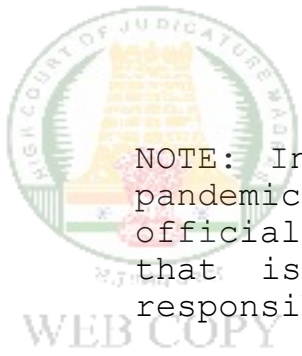
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Sub Assistant Registrar(CS)

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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 Motor Accidents Claims Tribunal,
Additional Subordinate Judge,
Tirunelveli.

Copy to

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

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-27553[F] dated
27/08/2021)

+1 CC to M/s.J.S.MURALI, Advocate (SR-27601[F] dated
27/08/2021)

C.M.A(MD)No.1239 of 2014
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KB(27.09.2021) 4P 6C