

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	16.11.2021
DELIVERED ON	01.12.2021

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CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No. 12 of 2016****and****C.M.P.No.154 of 2016**

The National Insurance
Company Limited, Karaikudi,
through its Branch Manager.

...Appellant/2nd Respondent

Vs.

1.Asari
2.M.Veerapandi

...R-1/Petitioner
...R-2/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree in M.C.O.P.NO.452 of 2009, dated 19.06.2015 on the file of the learned Motor Accident Claims Tribunal, Principal Subordinate Court, Tirunelveli, allow the appeal with Costs.

For Appellant :Mr.J.S.Murali
For R-1 :Mr.M.Sarangan
For R-2 :No appearance

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Judgment and Decree, dated 19.06.2015 in M.C.O.P.NO.452 of 2009, passed by the learned Motor Accident Claims Tribunal, Principal Subordinate Court, Tirunelveli.

2.It is a case of accident, which took place on 06.06.2009, morning at 09.15 a.m., the claimant was riding his two wheeler Yamaha Motor Cycle bearing Registration No.TN-58-L-9992 with his daughter who is a pillion rider from west to east, near Chenaiyar kovil, Madurai Nagar, Railway Colony, a two wheeler bearing Registration No.TN-63-S-4219 belongs to the 2nd respondent herein was riding with rash and negligent manner and dashed against the claimant's vehicle. Due to the said accident, the claimant has caused injuries on body.



3.The claimant has filed a petition in M.C.O.P. No.452 of 2009 on the file of the learned Motor Accident Claims Tribunal, Principal Subordinate Court, Tirunelveli, seeking compensation.

4.Before the Tribunal, on the side of the claimant two witnesses were examined as P.Ws.1 & 2 and marked nine documents as Exs.P.1 to P.9. One witness was examined as R.W.1 and marked Ex.R.1 to R.3.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the insurance company and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the lorry driver of the 2nd respondent herein and directed the appellant/insurance company to pay a sum of Rs.1,05,780/-as compensation.

6.The appellant/insurance company has filed this present appeal against the award passed by the tribunal.

7. Heard on either side. Perused the material documents available on record.

8. The 1st respondent/claimant has filed M.C.O.P.No.452 of 2009 to claim compensation for the injuries occurred by an accident, dated 06.06.2009. The tribunal has awarded a sum of Rs.1,05,780/-as compensation with 9% interest from the date of petition except for the period from 24.08.2011 to 10.07.2012 and 05.09.2012 to 03.07.2014.

9.Aggrieved by the aforesaid order, the appellant herein/insurance company has filed this Civil Miscellaneous Appeal on the ground that the First Information Report was registered after 5 days from the date of accident and also the First Information Report was closed as 'mistake of fact'. So, the tribunal ought to have consider these aspects and dismissed the claim petition.

10.The First Information Report was registered after 5 days and the same was closed as 'mistake of fact'. Admittedly, objection petition was also filed and the same is pending. Further, the wound certificate was marked as Ex.P.5. The claimant was admitted in hospital on 06.06.2009 and treated as inpatient for fracture. X-Rays and medical bills were also produced. The insurance company has not objected the documents.

11.The paragraph No.5 of the Judgment in the case of **United India Insurance Company Limited V. Kamla Devi and Others**, is extracted hereunder:



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"5.It should still have been possible for the Tribunal to take a decision uninfluenced by any decision that may have come before the criminal court. The several decisions which have come about on this issue are to the effect that a judgment in a criminal court is not binding on the Tribunal; the non-filing of a FIR is not material, even the fact of involvement of the vehicle as found by the criminal court is not binding. While the Tribunal is competent to assess the evidence which is brought before it and take an independent decision, then the point that has to be seen is whether there was any evidence worth its name before the Tribunal to come a finding that the particular vehicle was involved in the accident. It can be either that the version of Sitar Mohd. cannot be relied for he has contradicted himself wholesale with the version given before the criminal court or looked for other evidence which was placed before the Court. Alternatively if any explanation had been given by the witness as to why he deposed falsehood before the criminal court, even such an explanation could have been accepted to enter a finding that the accident took place only involving the particular insured's vehicle. In this case, no explanation has been given by the witness as to why he stated before the criminal court that he did not know which vehicle was involved in the accident. He would, on the other hand, defy that he ever made any such statement before the criminal court, necessitating the statement made before the criminal court to be exhibited for contradiction before the Tribunal. It must be remembered a statement in criminal court case by a witness is also on oath. If he was uttering falsehood, he was liable for perjury. If there was contradiction between the version elicited before the Tribunal to the statement made before the criminal court then such a witness will be unworthy of acceptance. The Tribunal could have simply rejected the whole evidence, if it was going to pick out one line from chief examination to say that the insured's vehicle was involved in the accident, the Tribunal was doing something which is not a judicial function but a travesty of justice".

12.Even in a case of non-filing of the First Information Report, the tribunal can decide the matter for compensation under Motor Vehicles Act.

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13. In the case on hand, belatedly the First Information Report was registered. The wound certificate and medical bills were also produced to prove the accident. Therefore, the tribunal has rightly decided the matter independently.

14. The tribunal has rightly awarded the compensation. The rate of interest 9% is to be modified.

15. Finally, this Civil Miscellaneous Appeal is partly allowed and the rate of interest alone is reduced to 7.5% from 9%. The appellant/insurance company is directed to deposit the entire award amount with 7.5%, within a period of two weeks, from the date of receipt of copy of this order. If any excess amount deposited, the appellant/insurance company is permitted to withdraw the excess award amount. After depositing the award amount, the claimant is entitled to withdraw the award amount. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ksa

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

The Motor Accident Claims Tribunal/
Principal Subordinate Court, Tirunelveli.

Copy to

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

+1 CC to M/s. J.S. MURALI, Advocate (SR-36998[F] dated 02/12/2021)
C.M.A. (MD) .No.12 of 2016
01.12.2021

PK (CO)
KB (23.12.2021) 4P 5C