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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :09.02.2021
CORAM:
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
C.M.A(MD)No.63 of 2015
and
MP(MD)No.1 of 2015

The Manager,
National Insurance Company Limited,
74-A, Paramathi Road,
Namakkal. : Appellant/2nd Respondent

Vs.

1.Shanmugam : R1/Petitioner
2.Anantkumar
3.The Manager,
IFFCO TOKYO General Insurance Company Limited,
Thulasi Chambers, 3rd Floor,
T.V Samy Road, R.S Puram,
Coimbatore. : R2 and R3/R1 and R3

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 29.06.2012 made in MCOP No.28 of 2010 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

For Appellant : Mr.R.Srinivasan
For 1st Respondent : Mr.K.Suresh Kumar
For 2nd Respondent : Dismissed, vide order, Dated 14.12.2017
For 3rd Respondent : Mr.G.Maruthaiya

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur, in MCOP No.28 of 2010, dated 29.06.2012.

2.The short facts of the case is that on 10.07.2009 at about 11.45 am, when the Tipper Lorry TN-41-R-3133 belongs to the claimant proceeding near Kaliyappanoor Kaliyammal Rice Mill at Karur to Gujiliamparai road, at that time, the Tanker Lorry TN-27-B-1699 came from the opposite direction in a rash and negligent manner and hit against the Tipper Lorry. Due to the impact, the Tipper Lorry of the petitioner was heavily damaged. The claimant, filed a claim petition seeking compensation of Rs.1,65,000/- on the ground that the driver of the offending vehicle is respondent for the accident.

3.The claimant has stated that the accident occurred only due to the rash and negligent driving of the Tanker Lorry and hence, he is entitled to compensation for the damages incurred to the Tipper Lorry.

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4.The claim was opposed by the appellant Insurance Company/2nd Respondent disputing the manner of accident and their liability to pay compensation.

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Tanker Lorry was responsible for the accident and awarded compensation Rs.1,65,000/- with interest @ 7.5% p.a. Challenging the award of the tribunal, the Insurance Company/2nd respondent is before this court as appellant.

6.Heard both sides and perused the materials available on record.

7.Even though several grounds were raised in the grounds of appeal, it is mainly contended by the learned counsel appearing for the appellant Insurance Company that the quantum arrived at in awarding the compensation is not based on any scientific approach, as the tribunal has not even taken into account the depreciated value of the vehicle. In support of his contention, the learned counsel relied upon the decision reported in ***2007(2) TN MAC 432 (The Managing Director, State Express Transport Corporation, (Tamil Nadu Division -1) Ltd., Chennai Vs. G.Kathamuthu and another).***

8.In this appeal, the point for consideration is as to whether the quantum of compensation for the damage caused to the vehicle should be arrived at after taking into account the depreciated value of the vehicle.

9.In this case, the tribunal awarded the compensation to the tune of Rs.1,65,000/-. Be that as it may, the grievance of the appellant Insurance Company is that the depreciation of the vehicle was not at all taken into consideration and according to them, 10% depreciation should have been taken for assessing the damages.

10.The learned counsel appearing for the appellant Insurance Company would convincingly argue that once a motor vehicle is used on the road, its value automatically gets depreciated; and on that ground, at lease 10% has to be deducted.

11.At this juncture, it is relevant to refer the decision reported in ***2007(2) TN MAC 432 (The Managing Director, State Express Transport Corporation, (Tamil Nadu Division -1) Ltd., Chennai Vs. G.Kathamuthu and another)***, wherein this court has held as follows:-

> *"21.The learned Counsel for the State Transport Corporation would convincingly argue that once a motor cycle is used on the road, its value automatically gets depreciated; and on that ground, at least 10% has to be deducted. The value was actually purchased on 20.01.1992 and the damage occurred on 09.10.1992; almost nine moths had elapsed by then. <u>Hence, I am of the considered view that 10% can be deducted towards</u>*

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<u>*depreciation while assessing the damages.*</u>"

12.On coming to the instant case on hand, as seen from Ex.P5, the damage assessed to the alleged vehicle shown as Rs.1,65,000/- and as such, the tribunal has awarded the entire damage amount of Rs.1,65,000/-. Keeping in view of the facts and circumstances of the case and in view of the decision referred supra, this court is of the considered view that 10% can be deducted towards depreciation while assessing the damages.

13.In that view, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the tribunal is modified as Rs.1,48,500/-. The interest awarded by the tribunal is maintained. The Appellant Insurance Company is directed to deposit the modified amount of Rs.1,48,500/- together with accrued interest and costs, within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited. On such compliance, the 1st respondent/claimant is entitled to withdraw the entire amount without filing any formal petition before the tribunal. Excess amount, if any shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal/
Karur.

2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SURESH KUMAR, Advocate (SR-3875[F] dated 09/02/2021)

+1 CC to M/s.G.MARUTHAIAH, Advocate (SR-4187[F] dated 10/02/2021)

C.M.A(MD)No.63 of 2015
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MJ(CO)
KB(08.06.2021) 3P 6C

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