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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No.3539 of 2010

Manikandan

.. Appellant /claimant

-VS-

1.Sivagnanaselvam
2.M/s.National Insurance Company Ltd.,
Nadar Colony, Atthur,
Salem District.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed Under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 09.11.2009 made in MCOP.No.553 of 2005 on the file of the Motor Accidents Claim Tribunal (II Additional Subordinate Judge) Salem.

For Appellant : Mr.S.Sivakumar

For Respondents : No appearance for R1
Mr.S.Arunkumar for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the Judgment and Decree dated 09.11.2009 made in MCOP.No.553 of 2005 on the file of the Motor Accidents Claim Tribunal (II Additional Subordinate Judge) Salem.



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2. The claimant is the appellant. He was working as a Sales Executive in ICICI Bank and Videographer earning a sum of Rs.6000/- p.m., On 14.02.2004, at about 23.45 hours, when the appellant was riding a Motor cycle bearing Regn.No.TN 30 P 2052 near Hasthampatti Roundana, the 1st respondent drove the Maruthi Esteem Car bearing No.TN 30 E 4254 in a rash and negligent manner and hit against the appellant, as a result of which, the appellant sustained multiple fractures and injuries. Thereafter, the appellant was taken to Salem Medical Central Hospital, then he was shifted to Salem Government Hospital and then admitted into P.P.Hospital, Salem for further treatment. The said accident caused permanent disablement to the appellant and now he is unable to do his work properly. The accident was due to the rash and negligent act of the driver of the 1st respondent vehicle. The 1st respondent is the owner of the car and the 2nd respondent is the Insurer of the Car. Therefore, this petition is filed by the appellant.

3. On behalf of the appellant/claimant, the appellant examined himself as PW1 and filed his exhibits marked as Ex.P1 to Ex.P5. Neither witness was examined nor exhibits were marked on the side of the respondents.



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4. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent / Insurance Company. No representation for the first respondent.

5. On perusal of records, it is seen that R2 remained ex parte before the court below. It further reveals that EX.P1 dated 15.02.2004 is the FIR copy; Ex.P2 dated 27.11.2007 is the Wound Certificate; Ex.P3 dated 10.03.2004 is the Certificate issued by P.P.Hospital, Salem; Ex.P4 dated is the Insurance Policy and Ex.P5 dated 14.02.2004 is the Scan Report.

6. The 2nd respondent/ Insurance Company resisted the claim of the victim that the lower court has not perused the documents properly and passed the order on merits. Therefore there is no liability on the part of the Insurance Company.

7. In such circumstances, in order to render substantial justice to the claimant, it would be appropriate that the Tribunal should re-consider the matter afresh by giving the appellant an opportunity to put forward all his contention and pleas in accordance with law and support his case with any material or oral evidence which can justify his claim. It is not as if that some new



witnesses are being added to determine the issue.

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8. The fact remains that the Insurance Policy was not produced before the court and examined by the Tribunal. Having made the Insurance company as a party to the claim petition and heard them on merits, it is just and necessary that the Insurance Policy should have been taken into consideration and a reasoned order should have been passed.

9. Having regard to the facts and circumstances of the case, this Court feels it appropriate that the matter should be remitted to the Tribunal for re-consideration on all aspects of the claim. Accordingly, the matter is remitted to the Tribunal for re-consideration of the matter afresh with liberty to the both parties to adduce all materials and evidence that may be available to them in support of their claim in accordance with law.

10. The learned counsel for the 2nd respondent is at liberty to file his counter and also to file set aside ex parte petition. After affording sufficient opportunity to the respondents to contest the matter, the trial court may commence its trial.

11. The Tribunal shall re-hear and dispose of the



MCOP.No.553 of 2005 on the file of the Motor Accidents Claim Tribunal (II Additional Subordinate Judge) Salem, within a period of three months from the date of receipt of a copy of this Judgment. It is also directed to consider the date of accident while disposing the case.

12. In the result, this Civil Miscellaneous Appeal is allowed and remitted in the above terms. No costs.

08.12.2022

Index : Yes/No
Speaking/non-speaking order
gv

Note: Registry is directed to send back all the original records to the Tribunal immediately.

To

1. The Motor Accidents Claim Tribunal
(II Additional Subordinate Judge) Salem.
2. The Public Prosecutor,
High Court, Madras.



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A.A.NAKKIRAN.,J

gv

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