



C.M.A.No.3398 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3398 of 2014

Karthikeyan

.. Appellant

-Vs.-

1. Neelavathi

2.The National Insurance Company,
Rep by its Manager,
194-A, Nethaji Road, First Floor,
Thiruvarur Town

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order of the Motor Accident Claims Tribunal (Additional Sub Court), Mayiladuthurai, dated 30.11.2011 made in M.C.O.P.No.6 of 2006.

For Appellant ... Mr.B. Jawahar

For Respondent-1 Not ready in notice

For Respondent-2 ... Mr.D.Baskaran



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JUDGMENT

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Aggrieved by the dismissal of his claim petition in M.C.O.P.No.6 of 2006 by the Motor Accident Claims Tribunal (Sub Court), Mayiladuthurai, the petitioner is before this Court.

2. The petitioner had filed the above claim petition seeking compensation of a sum of Rs.5,00,000/- for the injuries sustained by him in a road accident on 01.08.2005. The petitioner in his claim statement would state that he is aged about 24 years and is working as a service station washing man and as an auto driver earning a monthly income of Rs.7,000/- . On 01.08.2005, when he was transporting milk at around 9.00pm in a Mahindra Champion Minidor Auto, bearing Registration No.TN 51 T 0113 from Thiruvudaimadurai to Mayiladuthurai and was taking the turn at Moovalur temple, a white Ambassador car, which was driven in a rash and negligent manner hit his auto and drove fast without stopping. By reason of the impact, the auto had turned turtle and the petitioner had sustained grievous injuries. Therefore, he has come forward with the above claim petition against the owner of the minidor auto which he was driving and its



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Insurance Company.

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3. The first respondent had remained *ex-parte* and the Insurance Company had filed a counter *inter-alia* denying the allegations contained in the claim petition. However, a reading of the counter clearly indicates that the second respondent has not properly appreciated the contents of the claim petition. Except for denying the allegations, the second respondent had misunderstood the contents set out in Column 23 of the claim statement.

4. The Tribunal on considering Ex.P1-F.I.R observed that the accident had occurred only on account of the negligence of the petitioner himself, since in the F.I.R lodged by his brother, Rajesh, the accused has been shown as the petitioner himself and in the narration, his brother has stated that the person, who drove the minidor auto (namely, the petitioner) had driven the same in a rash and negligent manner, as a result of which, the vehicle had turned turtle and his brother/petitioner sustained injuries. The Tribunal observed that nowhere in the F.I.R it is stated that the accident had occurred on account of the ambassador car coming from the opposite



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direction which dashed against the minor auto. Therefore, considering the fact that the accident occurred only on account of the negligence of the petitioner, the claim petition was dismissed. Challenging the same, the petitioner is before this Court.

5. Mr.B.Jawahar, learned counsel appearing on behalf of the petitioner would submit that the Tribunal ought to have treated the said claim as one under the Workmen's Compensation and awarded compensation. That apart, he would state that the accident had taken place while the petitioner was in the course of his employment and therefore, he is entitled to a compensation by the first respondent.

6. Mr.D.Bhaskaran, learned counsel for the second respondent-Insurance Company would submit that the petitioner had the option of choosing to move either the Motor Accident Claims Tribunal or the Workmen's Compensation. However, having chosen to move before the MACT, the petitioner cannot now seek to have the claim treated as one under the Workmen's Compensation Act. He would submit that at best the



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petitioner would be entitled to claim a sum of Rs.25,000/- under “No fault liability” clause.

7. Heard the learned counsel on both sides and perused the materials available on record.

8. The argument that the petition be treated as one under the Workmen's Compensation Act cannot be considered for the simply reason that the petitioner has himself in his claim statement stated that he does not work under any employer, since under the 5th column of the claim petition against the words “காயம்பட்டவரின் தொழில் அதிபர் எவரேனும் இருப்பின் அவரது பெயரும், முகவரியும்”. The petitioner has clearly stated “இல்லை” meaning “No”. Therefore, once there is no employer-employee relationship, the petitioner cannot demand that the petition now before the Court be tried as one under the Workmen's Compensation Act.



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9. Therefore, considering the submissions of the learned counsel appearing for the Insurance Company, the petitioner is entitled to just a sum of Rs.25,000/- under the head of “No fault Liability”. The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.6 of 2006, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount now awarded by this Court. The C.M.A is allowed with the above direction. No costs.

04.11.2022

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To

1. The Motor Accident Claims Tribunal
(Additional Sub Court), Mayiladuthurai
2. The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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