



C.M.A(MD)No.1140 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1140 of 2010

and

M.P(MD) No.1 of 2010

Divisional Manager,
The Oriental Insurance Company Limited,
251, Arcot Road,
Vadapalani,
Chennai.

... Appellant

VS

1.P.Sundaram

2.P.Lakshmanaperumal

(2nd Respondent remained ex parte before
the lower Court)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award of Rs.28,000/- (Rupees Twenty Eight Thousand Only) passed in M.C.O.P.No.121 of 2009, dated 19.02.2010 on the file of the Motor Accidents Claims Tribunal cum Principal District Court, Thoothukudi.

For Appellant : Mr.K.Balasubramanian

For R1 : No appearance

For R2 : Mr.M.P.Senthil



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree, dated 19.02.2010 passed in M.C.O.P.No.121 of 2009 on the file of the Motor Accidents Claims Tribunal cum Principal District Court, Thoothukudi.

2. The case of the claimant, in nutshell, is as follows:

On 27.06.2005, at about 01.45 p.m, the first respondent-Sundaram was travelling in an Auto-rickshaw belonging to the second respondent bearing Reg.No.TN-65-A-5710 with other three passengers. Due to the negligent driving of the driver of the Auto-rickshaw, it dashed against the Park in front of the Gruz Fernandez Statue. In the impact, the first respondent/claimant sustained lacerated injuries on forehead and fracture in the right thigh bone. Immediately, he was taken to the Government Medical College Hospital, Thoothukudi. Alleging that the accident had happened due to the rash and negligent driving of the driver of the Auto- rickshaw, the first respondent/claimant filed a claim petition claiming compensation of Rs.75,000/-.



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3.The second respondent, who is the owner of Auto, remained absent before the Tribunal and therefore, he was set *ex-parte*. The appellant/Insurance Company contested the claim petition on all the grounds available to them.

4.Before the Tribunal, on the side of the claimant, one witness was examined as P.W.1 and five documents were marked as Exs.P.1 to P.5. On the side of the appellant/Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and four documents were marked as Ex.R1 to Ex.R4.

5.The Tribunal, considering the pleadings, both oral and documentary evidence let in by both the parties, allowed the claim petition and awarded compensation of Rs.28,000/- along with interest at the rate of 7.5% per annum. Challenging the said award, the present appeal is filed by the appellant/Insurance Company.

6.Heard Mr.K.Balasubramanian, learned counsel appearing for the appellant/Insurance Company and Mr.M.P.Senthil, learned counsel appearing for the second respondent and perused the materials available on record.



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7.The main ground on which the present appeal is filed by the appellant is that the driver of the Auto-rickshaw was not holding effective driving licence and in excess of permission limit, there were four persons in the Auto rickshaw, which is against the policy conditions. No medical bills have been produced for taking treatment and there is no evidence to show that she was a Tailor and earning a sum of Rs.3,000/- per month.

8. After perusing Ex.P1- First Information Report, Ex.P4-Final Report and Ex.P5-Copy of the Judgment, the Tribunal came to the conclusion that only due to the rash and negligent driving of the driver of the Auto-rickshaw, the accident had occurred, which is clearly in violation of policy conditions. However, it is seen from Ex.P2-Accident Register that the claimant had suffered three injuries due to the accident. It is not known as to how-long, the claimant was hospitalized. Therefore, by considering the facts and circumstances of the case and the available materials, this Court is inclined to order a consolidated compensation of Rs.25,000/- for the injuries sustained by the first respondent/claimant.



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9. In view of the above, the Civil Miscellaneous Appeal is partly allowed. The quantum of compensation awarded by the Tribunal is reduced from Rs.28,000/- to Rs.25,000/-. The appellant/Insurance Company is directed to deposit the compensation awarded by this Court, i.e., Rs.25,000/- together with interest at the rate of 7.5% per annum, if not already deposited, to the credit of M.C.O.P.No. 121 of 2009, on the file of the Motor Accidents Claims Tribunal-cum-Principal District Court, Thoothukudi, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, with accrued interest by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet :Yes/No
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To
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- 1.The Motor Accidents Claims Tribunal cum
Principal District Court, Thoothukudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN,J.

cp

JUDGMENT MADE IN
C.M.A(MD)No.1140 of 2010

15.09.2022.