



C.M.A(MD)No.1213 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.1213 of 2009

National Insurance Co.Ltd.,
81 D, Chetti Street,
Thiruchencode.

... Appellant /
2nd Respondent

vs.

1.Karthikeyan

2.N.Ramasamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 02.11.2007 and made in M.C.O.P.No.118 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithalai and praying to set aside the same.

For Appellant : Mr.N.S.Ramakrsihna Das

For R1 : Mr.V.Illanchazian

For R2 : Dismissed

For R3 : Mr.N.Asaithambi



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JUDGMENT

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This Civil Miscellaneous Petition is filed to set aside Judgment and Decree dated 02.11.2007 made in M.C.O.P.No.118 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithalai.

2. Brief facts of the case is as follows:-

On 10.05.2004, the first respondent/claimant was travelling in a bus bearing registration No.TN-32-N-0953 belonging to the third respondent, which was driven by its driver in a rash and negligent manner from Kulithalai to Trichy direction. At that time, the lorry bearing Registration No.TAS-6699 belonging to the second respondent and insured with the appellant driven by its driver in a rash and negligent manner with great speed, came in the opposite direction. Due to the rash and negligent driving of the driver of the lorry, it has dashed on the right turn side of the bus near window, where the petitioner was sitting. In the impact, the claimant sustained multiple injuries all over the body. Alleging that the accident had happened due to the rash and negligent driving of the driver of the lorry, the first respondent/claimant filed a claim petition claiming compensation of Rs.5,00,000/-



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3.The owner of the lorry 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, two witnesses were examined as P.W.1 and P.W.2 and eleven documents were marked as Exs.P1 to P.11. On the side of the appellant/Insurance Company, two witnesses were examined as R.W1 and R.W2 and three documents were marked as Ex.R1 to Ex.R3.

5.The Tribunal, on appreciation of evidence adduced by the claimant, found that the driver of the lorry had caused the accident and awarded compensation of Rs.5,00,000/- with interest at the rate of 6% per annum. Aggrieved over the same, the present appeal has been filed.

6. It is the main contention of the learned counsel appearing for the appellant/Insurance Company that the Tribunal had erred in fixing the entire negligence on the part of the driver of the lorry and they ought to have fixed negligence on the part of the driver of the bus also. It is further contended that the disability assessed by the Doctor-P.W.2 is on the higher side and no documentary evidence was produced to prove that



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the claimant was terminated from service after the accident, due to the alleged disability sustained by him. Hence, the learned counsel prays for reduction of compensation.

7. Heard the learned counsel appearing for the first respondent/claimant and the learned counsel appearing for the third respondent/Transport Corporation and perused materials available on record.

7.Though the learned counsel appearing for the appellant/Insurance Company contended that the driver of the bus also contributed to the accident, to prove the said contention, the appellant has not produced any documents. Hence, the contention of the appellant in this regard is rejected. Further, the learned counsel appearing for the appellant/Insurance company has contended that the award is on the higher side and it requires reduction. However, a perusal of the records reveal that the Tribunal, on proper appreciation of evidence of Ex.P.2-Wound Certificate, Ex.P.5-Report of the Operation and Hospital, Ex.P.6-Medical Bills, Ex.P.10-Disability Certificate and Ex.P.7-Employment Certificate, has awarded a just and reasonable



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compensation. This Court finds no reason to interfere with the conclusion reached by the Tribunal. Hence, this appeal is liable to be dismissed.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed. The award and decree dated 02.11.2007 made in M.C.O.P.No.118 of 2005 on the file of the Motor Accident Claims Tribunal, Sub Court, Kuzhithalai, is confirmed. The rate of interest fixed by the Tribunal is also confirmed. The appellant/Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit is being made by the appellant, the first respondent/claimant is permitted to withdraw the award amount together with accrued interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal. No costs.

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Index :Yes/No
Internet :Yes/No



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A.A.NAKKIRAN .,J.

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To

- 1.The Motor Accident Claims Tribunal/Sub Court,
Kulithalai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

JUDGMENT MADE IN
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