



C.M.A.(MD)No.1433 of 2009

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DATED : 09.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

C.M.A.(MD)No.1433 of 2009

The New India Assurance Co., Ltd.,
66, West Boulivar Road,
Trichy – 8.

... Appellant/2nd Respondent

Vs.

1.Selvaraj
2.Fathima Beevi

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree, dated 17.08.2009 made in M.C.O.P.No. 1356 of 2003, on the file of the Motor Accident Claims Tribunal / Additional District Sessions Court, Thiruchirappalli.

For Appellant	: Mr. J.S. Murali
For R1	: Mr.S. Deenadhayalan
For R2	: No appearance

* * * * *

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant /



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Insurance Company against the award, dated 17.08.2009 made in M.C.O.P.No.1356 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Sessions Court), Thiruchirappalli.

2.The appellant / Insurance Company is the 2nd respondent in M.C.O.P.No.1356 of 2003. The 1st respondent / claimant filed a claim petition before the Motor Accident Claims Tribunal / Sub Court, Uthamapalayam, claiming a sum of Rs.5,00,000/- as compensation.

3. According to the 1st respondent / claimant on 31.01.2003, he was walking on the Chettikulam, Alathur Gate Road, on the left side and at that time, the Auto bearing Regn.No.TN 46 R 7291 came towards Chettikulam and the auto was driven by its driver in a rash and negligent manner and dashed against the first respondent herein and wheel of the auto ran over on the right leg of the claimant. In the said accident, the first respondent / claimant sustained grievous injuries all over the body and the right leg knee bone was fractured. Hence, he filed the claim petition.

4. The Tribunal, considering the pleadings, oral and



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documentary evidence, awarded a total sum of Rs.1,10,000/- as compensation. Aggrieved by the said Award, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

5. The learned counsel appearing for the appellant submitted that the accident has not occurred due to the rash driving of the driver of the said Auto and the auto also not dashed against RW.1. He further submitted that the first respondent / claimant was travelling in an Auto Rickshaw, which capsized. He further submitted that Ex.B2-wound certificate and Ex.A2 –discharge certificate would reveal that the first respondent was travelling in the Auto Rickshaw which capsized. Furthermore, the first respondent / claimant has not lodged any complaint and only the brother of first respondent gave complaint after a period of one week and for that delay, proper explanation has not been given by the first respondent.

6. The learned counsel appearing for the first respondent / claimant would submit that the accident occurred only due to the rash and negligent driving of the driver of the auto belonging to the 2nd respondent



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and hence, the Tribunal has rightly observed that the accident occurred only due to the rash and negligent driving of the driver of the auto belonging to the 2nd respondent. Hence, he prayed for dismissal of this appeal.

7. I have heard the learned counsel appearing for appellant and the first respondent and perused all the materials available on record.

8. On perusal of the document Ex.B2 – wound certificate it is seen that when the first respondent / claimant was travelling in an auto rickshaw, which capsized. Furthermore, the complaint was given by the brother of the first respondent / claimant after a period of one week and for that delay no explanation was given by the first respondent / claimant. Therefore, this Court is of the view that the first respondent / claimant has not approached the Court with clean hands and proper particulars and the proper explanation has also not been given for the delay in lodging First Information Report. Hence, this Court is inclined to set aside the Award, dated 17.08.2009 made in M.C.O.P.No.1356 of 2003, on the file of the Motor Accident Claims Tribunal (Additional District Sessions Court,



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Thiruchirappalli and accordingly, set aside.

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9. In the result, this Civil Miscellaneous Appeal is allowed. The appellant / Insurance Company is given liberty to withdraw the amount, which is lying in the credit of M.C.O.P.No.1356 of 2003, on the file of the Motor Accident Claims Tribunal / Additional District Sessions Court, Thiruchirappalli. No costs.

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Index :Yes/No
Internet :Yes/No
trp

To

- 1.The Motor Accident Claims Tribunal,
(Sub Court), Uthamapalayam,
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A. NAKKIRAN, J.,

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