



C.M.A(MD)No.469 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.11.2022

Pronounced on : 07.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

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Elangovan @ Lakshmanan (died)

2.Neela

(2nd appellant is brought on record as LR
of the deceased sole appellant vide Court
order)

...Appellant/ Petitioner

Vs

1.Muruganandam

2.The United India Insurance Company Ltd.,
represented by its Branch Manager,
Kumbakonam.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order passed in M.C.O.P.No.56 of 2003 dated 06.06.2003, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.R.Maheswaran

For R1 : No appearance

For R2 : Mr.A.S.Mathialagan



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.56 of 2003 dated 06.06.2003, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thanjavur at Kumbakonam. The appellant herein is the claimant. Respondents herein are the respondents in the original claim petition.

2.Brief substance of the claim petition is as follows:

On 02.04.2000 at about 2.30 p.m, when the petitioner was proceeding along the left side of the Atrankarai road at Thirupuvanam, a tractor bearing registration number TN 49 W 6819, came in a rash and negligent manner, dashed against the petitioner and he fell down. The right front wheel of the tractor ran over the legs of the petitioner. The petitioner was taken to the Government Hospital, Kumbakonam and he sustained permanent disability. He was unable to do his normal works. The petitioner claimed a sum of Rs.2,00,000/- as compensation.

3.Brief substance of the counter filed by the second respondent is as follows:



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The Tractor was insured with the second respondent. The driver was not having valid driving licence. The age, avocation and monthly income are to be proved. The petitioner was neither a coolie nor a mason or a load man. The income is denied. The manner of accident is falsely stated in the petition. The injuries are simple in nature. The appeal is to be dismissed.

4.Three witnesses were examined and eleven(11) documents were marked on the side of the respondent. No witness was examined and one document was marked on the side of the respondent. The Tribunal dismissed the claim petition.

5.Against the same, the claimant filed this appeal on the following grounds:

The Tribunal failed to consider that the entire negligence was on the driver of the tractor. The claimant had adduced evidence for proving negligence. Only based on Ex.R1, the Tribunal has come to a conclusion that it was the claimant, who fell down from the vehicle. The Tribunal ought to have accepted the case of the claimant as pleaded by him. The involvement of the vehicle was accepted and consequential payment of compensation cannot



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be denied. Without examining the driver of the vehicle, the Tribunal has come to a conclusion that the accident was not due to the negligence of the driver of the tractor. The Tribunal did not even appreciate the claim under no fault liability, though the insurance policy of the vehicle was in force.

6.On the side of the appellant, it is stated that the claimant was dead and that the mother of the claimant was impleaded as the appellant herein. The appellant has examined three witness and marked eleven(11) documents. The insurance company has marked only one document which is a wound certificate. P.W.2 was examined as the eye witness. P.W.2 has deposed that the tractor dashed against the petitioner and the car that came behind the petitioner ran over the petitioner. In the wound certificate, it was mentioned that the claimant fell down from the tractor.

7.On the side of the respondent it is stated that the owner of the car and the insurer of the car are necessary parties and it is duty of the claimant to prove that the driver of the tractor was the root cause for the accident. The Tribunal is right in dismissing the claim petition.



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8. Ex.P1 is the copy of the First Information Report. Ex.P2 and Ex.P5 are the motor vehicle inspection reports. Ex.P3 is the copy of the registration certificate. Ex.P4 is the copy of the judgment. Ex.P9 is the copy of the admission petition. Ex.P10 is the copy of the driving licence. From Ex.P4 and Ex.P9, it is clear that the driver of the vehicle admitted his guilty and he was convicted by the criminal court.

9.It is seen that there is some contradiction between the evidence of P.W.1 and P.W.2, and Ex.R1 regarding the manner of accident. In the evidence of P.W.2, it is stated that the claimant was hit by the tractor then subsequently a car ran over the claimant who fell down. Considering the evidence of P.W.2, it is clear that since the tractor hit the claimant, he fell down. Only after the claimant fell down, a car was able to ran over him. The FIR and charge sheet were filed against the driver of the tractor. The driver of the tractor has admitted his guilt and he was convicted by the criminal Court. It is clear that the tractor hit the claimant which resulted in the injury. The involvement of the tractor is mentioned in the evidence of P.W.1, P.W.2 and Ex.R1. The fact that the claimant fell down, also was mentioned in the evidence of P.W.1 and P.W.2 and Ex.R1. Hence it is decided that the



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accident has happened due to the rash and negligent driving of the driver of the tractor. For the above reasons, it is decided that the driver of the tractor was responsible for the accident.

10.A copy of the driving licence was marked as Ex.P10. There is no violation of policy conditions. The insurance policy was marked as Ex.P11. The insurance policy is valid on the date of accident. Hence, it is decided that the respondents are liable to pay compensation to the claimants/ appellants.

11.The wound certificate was marked as Ex.R1. The disability certificate was marked as Ex.R6, X-ray was marked as Ex.P7. P.W.3-Doctor has deposed that the petitioners sustained injuries. P.W.3 has deposed that the appellant was having 24% disability. Discharge summary was marked as Ex.P8. Considering that the original appellant died and his mother was impleaded as the legal representative, It is decided that the present appellant(2nd appellant) is not entitled to claim compensation for the disability for her deceased son.



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12.On the side of the appellant, it is stated that the deceased was earning Rs.150/- to Rs.170/- per day. The deceased was working as a load man and he used to work as a mason and he was earning Rs.150/- to Rs.170/- per day, which comes to Rs.4,500/- per month. For the period of treatment and for the period of rehabilitation, the present appellant might have suffered loss of income. Hence, the loss of monthly income is calculated as Rs. 27,000/- for a period of six months. The present appellant is entitled to Rs. 3,000/- towards transport expenses, Rs.5,000/- towards extra nourishment, Rs. 5,000/- towards attendant charges, Rs.10,000/- towards medical expenses. Hence, the award is modified as follows:

Loss of income	-	Rs.27,000/-
Transport expenses	-	Rs. 3,000/-
Extra nourishment	-	Rs. 5,000/-
Attendant charges	-	Rs. 5,000/-
Medical expenses	-	Rs.10,000/-

Total	-	Rs.50,000/-

13.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation is fixed as Rs.50,000/- (Rupees Fifty Thousand only) which shall carry interest at the rate of 7.5% per annum.



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(ii) The second respondent / insurance company is directed to deposit the entire compensation of Rs.50,000/- together with interest at the rate of 7.5% per annum from the date of accident till the date of deposit and proportionate costs to the credit of M.C.O.P.No.56 of 2003 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Thanjavur at Kumbakonam, within a period of eight weeks from the date of receipt of a copy of this order and permitted to collect the same from the owner of the vehicle.

(iii) On such deposit being made by the second respondent / insurance company, the second appellant / claimant is permitted to withdraw the entire award amount of Rs.50,000/- (Rupees Fifty Thousand only) with proportionate interest.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal / Chief Judicial Magistrate,
Thanjavur, Kumbakonam.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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