



C.M.A.(MD)No.923 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.10.2022

Delivered On : 09.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.923 of 2012

Pitchandi

.. Appellant /claimant

Vs.

1.Marimuthu

2. National Insurance Company Ltd.,

through its Branch Manager,

No.175-A, Great Cotton Road,

Tuticorin.

.. Respondents /

Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.566 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Court-Fast Track Court No.2, Tirunelveli, dated 29.12.2011.

For Appellant

: Mr.T.Selvakumaran

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.S.Srinivasa Raghavan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, made in M.C.O.P.No.566 of 2011, on the file of the Motor Accident Claims Tribunal – Additional District Court - Fast Track Court No.2, Tirunelveli, dated 29.12.2011. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A Brief substance of the petition, in M.C.O.P.No.566 of 2011, is as follows:-

On 02.04.2011, at about 2.30 pm., the petitioner was riding a two wheeler bearing Registration No.TN-69-M-9088 along the Tirunelveli -Thoothukudi main road, near Mangalagiri branch road, a tanker lorry bearing Registration No.DCT- 0042, which was parked on the mud road, was suddenly taken up in a rash and negligent manner and dashed against the motor cycle. The petitioner sustained injuries, he took treatment as in patient for a period of 15 days. He undergone surgery and plates were affixed. The petitioner was aged about 48 years and he was working as a quarry contractor in Dhanuskodi and was earning Rs.10,000/- per month. After the accident, the petitioner could not attend his work and he claimed a sum of Rs.7,00,000/- as compensation.



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3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.566 of 2011, is as follows:-

The age, avocation, injuries, nature of treatment, disability are to be proved. It is wrong to state that the accident has happened due to the rash and negligent driving of the first respondent. The manner of accident is wrongly stated. It was the petitioner, who was carrying 50 Kgs load on the petrol tank portion of the motor cycle and he came in a rash and negligent manner and tried to cross the lorry, he could not control the vehicle, due to the heavy load and he skit on the road and invited the accident. The petitioner was not having valid driving licence at the time of accident. The motor cycle was not at all insured. The petitioner sustained only simple injuries, there is no permanent disability. The claim is excessive.

4. 2 witnesses were examined and 7 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. The Tribunal dismissed the claim petition.

5. Against the order, the claimant / appellant has filed this appeal on the following grounds:-



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The Tribunal failed to consider that the F.I.R was filed by the claimant while he was admitted in the hospital and the claimant was not aware of the contents of the document. The Tribunal ought to have granted just compensation on the basis of the injuries sustained by the claimant. The Tribunal ought to have granted Rs.70,000/- under the head of disability. The Tribunal ought to have granted compensation for medical bills as Ex.P5. A compensation of Rs.5,000/- towards transport expenses, Rs.50,000/- towards pain and sufferings and Rs.25,000/- towards loss of amenities to be granted. The appellant claimed a sum of Rs.3,00,000/- as compensation.

6. On the side of the appellant, it is stated that the Tribunal dismissed the claim petition on the ground that the FIR has to be accepted in total. There was no evidence on the side of the respondent and the Tribunal failed to take note of the same. The Tribunal failed to consider the evidence of P.W.1.

7. On the side of the respondent, it is stated that in the claim petition it was mentioned that it was the lorry that suddenly turned and dashed against the two wheeler. The lorry never involved in the accident. The lorry did not even touch the two wheeler. It was the claimant, who was carrying 50 Kgs load on the petrol tank portion of the motor cycle, lost the balance, while he applied the sudden brake and he fell down.



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8. On the side of the respondent, it is stated that in the F.I.R., it is stated that it was the claimant, who applied the sudden brake and was skit on the road. The claimant has not chosen to examine any other eye witness, he has admitted that he was carrying 50 Kgs of load in the two wheeler. The claimant himself has given the statement for registering the F.I.R. The evidence of P.W.1, given against his own statement in the F.I.R., is untrust worthy.

9. On the side of the respondent, it is further stated that the document produced by the claimant has to be taken into consideration as a whole and not as a part. The claimant cannot rely on a portion of the F.I.R. and deny the other portion. A judgment reported in 2008-1-LW-864 is cited.

10. On the side of the appellant, it is stated that the Tribunal is wrong in relying on the judgment reported in 2008-1-LW-864, when there was no evidence on the respondent side, the case of the appellant has to be taken into consideration. A Judgment of the Hon'ble Supreme Court reported in 2021-2-TNMAC-449 (SC) is cited, wherein, it is stated that the evidence recorded before the Tribunal has to be given more weightage than the contents of the F.I.R.



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11. Copy of the F.I.R was marked as Ex.P1. In the F.I.R., it is mentioned that the tanker lorry, which was stationed, was moved all of a sudden and it was the claimant, who applied the brake and fell down. It was not the case of the claimant that the lorry hit against the two wheeler. On seeing the lorry turned suddenly the claimant applied the brake and skit on the road. It is true that the evidence has to be given more weightage than the F.I.R. In this case, the complaint was given only by the claimant. In the evidence of P.W.1, it is stated that the side portion of the lorry hit against the motorcycle. From the evidence of P.W.1, it is seen that only the side portion of the lorry hit against the two wheeler. There is no possibility of the side portion of the lorry to hit against the two wheeler. From the evidence of P.W.1 and Ex.P1, it is clear that the accident ought to have taken place only due to the negligence of the claimant himself.

12. The claimant has further stated that he has sustained only inner injuries and there was no external injuries. It is seen that the claimant has admitted that there was no insurance policy for his two wheeler. The claimant has failed to mark the MVI report for the two wheeler. In the above circumstance, the contention of the claimant that since he gave the complaint in the hospital, he was not aware of the contents of the complaint is unsustainable.



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13. For the reasons stated above, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. No costs.

09.11.2022

Index : Yes/No
Internet : Yes/No
Ls

Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Motor Accident Claims Tribunal –
Additional District Court -
Fast Track Court No.2,
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.923 of 2012

09.11.2022