



C.M.A(MD)No.1805 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.11.2022

Pronounced on : 16.12.2022

CORAM

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

C.M.A(MD)No.1805 of 2013

The Branch Manager,
National Insurance Company Limited,
No.6, West Masi Street,
Madurai.

... Appellant/ 2nd Respondent

Vs

1.Nizamudeen

... 1st Respondent/Petitioner

[Minor 1st respondent was declared as major and the guardianship of his father/guardian/Mohammed Kasim was discharged vide order dated 07.11.2022 made in C.M.P.(MD) Nos.10277 & 10279 of 2022 in C.M.A.(MD) No.1805 of 2013]

2.Kadar Hussain

... 2nd Respondent/1st Respondent

3.Manoharan

... 3rd Respondent/3rd Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 12.10.2012 made in M.C.O.P.No.32 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Madurai.

For Appellant : Mr.D.Sivaraman



C.M.A(MD)No.1805 of 2013

For R1 : Mr.M.S.Jeya Karthik
For R2 : Mr.R.Suriya Narayan
For R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.32 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Madurai. The appellant is the second respondent, first respondent is the claimant, respondents 2 and 3 are the respondents 1 and 3 in the claim petition.

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

On 06.07.2010 at about 7.45 a.m., when the minor petitioner was travelling as a passenger in a share auto bearing registration number TN 59 AM 7831 from Panikulam to Thiruvathavoor, the driver of the auto drove the vehicle in a rash and negligent manner, dashed against a van bearing registration number TN 57 B 1137 that came from the opposite direction. The petitioner sustained multiple injuries. He was taken to Government Hospital, Madurai. He sustained disability and the petitioner claimed Rs.3,00,000/- as compensation.



C.M.A(MD)No.1805 of 2013

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

The accident has happened only due to the rash and negligent driving of the third respondent driver. The driver of the first respondent was not responsible for the accident. The petitioner has to prove the age, injuries, medical expenses through proper documents. The claim is excessive.

4. Four witnesses were examined and thirteen documents were marked on the side of the petitioner. Two witnesses were examined and two documents were marked on the side of the respondent. The Tribunal has fixed the liability on both the vehicles and awarded a compensation of Rs. 1,11,159/-.

5. Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal failed to note that the accident has occurred only due to the negligence of the driver of the van that belong to the third respondent herein. The FIR and the charge sheet were filed against the driver of the van. The evidence of P.W.2 is suspicious and he was not at all enquired by the police. P.W.2 was not an eye witness mentioned in the criminal case and he has deposed that he did not know the registration numbers of the auto and the



C.M.A(MD)No.1805 of 2013

van. Fourteen passengers travelled in the auto, against the permitted seating capacity and since there is policy violation, the insurance company will not be liable to pay compensation,. The award is excessive.

6.On the side of the appellant it is stated that only since the van was not having valid insurance, the Tribunal has fixed contributory negligence on the auto driver. The seating capacity of the auto is only three persons. At the time of accident, four passengers travelled in the auto. There is no documents to prove that P.W.2 was an eye witness.

7.On the side of the claimants, it is stated that P.W.2 was examined as an eye witness. On the side of the first respondent it is stated that R.W.1 and R.W.2 were not eye witnesses and their statements cannot be taken into consideration. A judgment of this Court made in C.M.A.No.1989 of 2009 dated 04.07.2018 is cited, wherein it is held that,

"20. Therefore, even if the Tribunal are not bound by the strict principles of the Evidence Act, 1872, statement of a person who had no direct knowledge of the accident has no evidentiary value. Therefore, deposition of such an officer of the appellant insurance company has no evidentiary value."



C.M.A(MD)No.1805 of 2013

9. On the side of the first respondent it is stated that the compensation amount is to be enhanced. For 18% disability, the Hon'ble Apex Court has awarded a sum of Rs.3,75,000/- as compensation. A judgment of the Hon'ble Supreme Court reported in **2013 (2) TNMAC 338(SC)** in the case of **Master Mallikarjun vs Divisional Manager**, is cited.

10. A copy of the FIR was marked as Ex.P7. P.W.1 and P.W.2 have deposed that the accident has occurred only due to the rash and negligent driving of the auto driver. Copy of the charge sheet and copy of the criminal Court judgment were not filed by the appellant. Hence, it is decided that the appellant has not proved that P.W.2 is not an eye witness.

11. No eye witness was examined on the side of the appellant. R.W.2 was an official from the insurance company. The private investigator appointed by the insurance company has filed a report which is marked as Ex.R1. P.W.2 was an official from the insurance company. R.W.2 has deposed that there were twelve passengers travelling in the share auto at the time of accident. Except Ex.R1, there is no other documents to prove that twelve persons travelled in the share auto at the time of accident. Hence it is



C.M.A(MD)No.1805 of 2013

decided that both the auto driver and the van driver are responsible for the accident.

12.The discharge summary was marked as Ex.P4, case sheets were marked as Ex.P9 and Ex.P12, disability certificate was marked as Ex.P10. X-ray was marked as Ex.P11. The O.P. sheet was marked as Ex.P13. P.W.4- Doctor has assessed the disability at 18%. The Tribunal has awarded Rs. 36,000/- for the permanent disability which is reasonable.

13.Medical bills are marked as Ex.P1 and Ex.P2. Prescriptions were marked as Ex.P3, X-ray receipt was marked as Ex.P5. The Tribunal has awarded Rs.60,159/- towards medical expenses, which is reasonable. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, Rs.5,000/- towards nutrition food which are all reasonable. For the above reasons, it is decided that there is no sufficient enough grounds to interfere with the order of the Tribunal.

14.Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.



C.M.A(MD)No.1805 of 2013

WEB COPY

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.1,11,159/- (Rupees One Lakh Eleven Thousand One Hundred and Fifty Nine only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant / Insurance Company and the third respondent are directed to jointly deposit the entire compensation of Rs.1,11,159/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.32 of 2011 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Judge, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance company and the third respondent, the first respondent herein/claimant is permitted to withdraw the entire share of Rs.1,11,159/- (Rupees One Lakh Eleven Thousand One Hundred and Fifty Nine only with proportionate interest and cost.

16.12.2022

Index: Yes / No
Internet : Yes / No

pnn

7 / 8



WEB COPY



C.M.A(MD)No.1805 of 2013

R. THARANI, J

pnn

To

- 1.The Motor Accidents Claims Tribunal, II Additional Sub Judge, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Pre-delivery Judgment made in
C.M.A(MD)No.1805 of 2013

16.12.2022