



C.M.A.(MD)No.344 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 04.11.2022

Delivered On : 30.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.344 of 2013

The Branch Manager,
National Insurance Co. Ltd.,
No.4132, Kilrajavethi,
Pudukottai.

.. Appellant /2nd Respondent

Vs.

1.Srinivasan

... 1st Respondent / Petitioner

2.P.Mohamadu Meera

...2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, dated 24.02.2004, made in M.C.O.P.No.837 of 2000, on the file of the Motor Accident Claims Tribunal (Additional District Judge-Fast Track Court), Pudukkottai.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents

: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 24.02.2004, made in M.C.O.P.No.837 of 2000, on the file of the Motor Accident Claims Tribunal (Additional District Judge-Fast Track Court), Pudukkottai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.837 of 2000, is as follows:

On 23.10.1999, when the petitioner was travelling in an auto bearing Registration No.TN-55-A-3253 from Annavasal to Pudukkottai, the driver of the Auto drove the vehicle in a rash and negligent manner and hit against a tri-cycle. The petitioner sustained injuries. He was admitted in Pudukkottai Government Hospital and took treatment for 2 days, then, he was admitted in a private hospital, Ponnamaravathy and took treatment for 2 days as inpatient. The petitioner claimed a sum of Rs.5,00,000/- as compensation.



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3. A Brief substance of the counter filed by the first respondent, in M.C.O.P.No.837 of 2000, is as follows:

The manner of accident is wrongly stated in the petition. The driver of the auto drove the vehicle in a slow and cautious manner. Though the auto driver was keeping the extreme left side of the road, to avoid hitting the tri-cycle, it was the tri-cycle, which came in a Zig-Nag manner and dashed against the Auto. The vehicle is insured with the second respondent and the first respondent is not liable to pay compensation.

4. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No.837 of 2000, is as follows:

It is wrong to state that the first respondent driver drove the vehicle in a rash and negligent manner. The age, profession and monthly income, treatment particulars are all denied. The claim is excessive. There was no serious injuries, no loss of income or permanent disability. The injuries, period of treatment, mode of treatment, medical expenses are all denied. The vehicle was not having fitness certificate and permit. On the date of accident, the driver was not having valid driving licence. The petition is to be dismissed as against the second respondent.



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WEB COPY 5. 3 witnesses were examined and 6 documents were marked, on the side of the claimant. 6 witnesses were examined and 1 document was marked, on the side of the respondents. 3 documents were marked as Ex.X1 to X3. After considering both sides, the Tribunal has awarded a sum of Rs.1,01,700/- as compensation with 9% interest to be paid by the respondents.

6. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal wrongly fixed the liability on the appellant, without any proof. The Tribunal failed to consider that P.W.2 was an interested witness. F.I.R was not lodged either by P.W.1 or by P.W.2. Both in the F.I.R and in the wound certificate, the number of the vehicle was not mentioned. The claimant and the owner of the vehicle colluded together and a false claim petition was filed. The first respondent sustained only simple injuries. The claim is excessive.

7. On the side of the appellant, it is stated that the claimant failed to file a police complaint. The Doctor, who gave the first aid, failed to inform the police. In the wound certificate, neither the type of the vehicle nor the number of the vehicle



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was mentioned. The insured vehicle was not at all involved in the occurrence.

3 Persons travelled in the auto, to attend a musical event. The other 2 persons did not file any claim petition. The Doctor, who attended a medico legal cases, failed to send intimation to the police. The vehicle number was mentioned after collusion with the owner of the vehicle. The owner remained ex-parte. The Tribunal failed to consider that there was no F.I.R and there is no identification of the vehicle. The Tribunal failed to consider that there was no proof for the involvement of the vehicle. Unless the vehicle is involved, there is no necessity for the Insurance Company to indemnify the owner.

8. Though the name of the respondents were printed, there was no representation on the side of the respondents. Hence, no oral argument on the side of the respondents was recorded.

9. P.W.2 has deposed that the accident was intimated to the Police, Pudukkottai Town police Station, on 24.10.1999. Case sheet was marked as Ex.X1. The intimation received by the Head Constable, Pudukkottai Town Police Station was marked as Ex.X1 (intimation register). R.W.2 has admitted that the intimation was received by the police. R.W.3 has deposed that the vehicle number was not



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available in the intimation sent by the hospital. R.W.4 has deposed that the fitness certificate was valid on the date of accident. R.W.5 has deposed that he conducted a private investigation and his report was filed as Ex.R1 and he has deposed that R.W.1 gave a statement that the vehicle was not involved in the occurrence.

10. In the cross-examination of R.W.5, he has admitted that he has not examined the owner of the vehicle, but, he got document from him and that he collected the particulars of accident in that locality and that no F.I.R was registered. The injured took treatment in Pudukkottai Government Hospital. The injured was admitted by his brother-Pandian. The vehicle number was not mentioned in the F.I.R. Copy of the wound certificate issued by the Government Hospital and private hospital were marked as Ex.P1. Scan picture was marked as Ex.P2. The intimation given to town police station was marked as Ex.P3.

11. It is seen that intimation regarding the accident was given by the Hospital to the police station. It is admitted that the claimant was taking treatment in the hospital. It is seen that though intimation was served to the police, it was the police, who failed to register the F.I.R, immediately. Normally, there is no habit of entering the number of the vehicle in the wound certificate or in the Accident



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Register. Unless the F.I.R was on the complaint of the claimant or on the complaint of an eye witness, there is no possibility of the number of the vehicle to be mentioned in the complaint.

12. The Tribunal has referred a judgment of the High Court of Himachal Pradesh at Shimla reported in 1990-MCJ-333 (Brestu Ram V. Anant Ram and others), wherein, the High Court has held that there is no necessity for registering F.I.R and in accordance with the nature and circumstance of case, compensation can be granted. It is seen that on the date of accident itself, the petitioner has taken treatment in the Government Hospital. From the evidence of P.W.1 and P.W.2, it is clear that the driver of the Auto was responsible for the accident.

12. From Ex.P3, it is clear that intimation regarding the accident, was given to the police. Considering Ex.P3 and considering the evidence of P.W.1, it is decided that the accident was due to the rash and negligent driving of the auto driver. From the judgment referred by the Tribunal, it is clear that registration of F.I.R is not mandatory for claiming compensation. Hence, it is decided that the accident was proved and hence, it is decided that the appellant is liable to pay compensation.



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13. P.W.3 conducted surgery and he has deposed that the claimant undergone surgery and a portion of his spleen was removed. He assessed the disability at 5% to 10%. Discharge summary notes was marked as Ex.P5. Scan Picture was marked as Ex.P 2. The bills for the treatment was marked as Ex.P4 and Discharge summary notes was marked as Ex.P5. Wound certificate was marked as Ex.P6.

14. On the basis of Ex.P4, the Tribunal has awarded Rs.36,700/- towards medical expenses, which is reasonable. The Tribunal has awarded Rs.25,000/- towards pain and sufferings, Rs.30,000/- towards permanent disability, Rs.5,000/- towards extra nourishment charges, Rs.5,000/- towards transport expenses, which are all reasonable. Hence, the quantum of compensation awarded by the Tribunal is hereby confirmed.

15. It is seen that the Tribunal has fixed the interest at 9% which is excessive and the interest is reduced to 7.5%. With the above modification, this Appeal is partly allowed.



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(i) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 1,01,700/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order and with cost.

(ii) On such deposit being made by the appellant / Insurance Company, the first respondent / claimant is permitted to withdraw the entire award amount along with interest and costs, on the filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any. No costs.

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Index : Yes/No

Internet : Yes/No

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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 Additional District Judge
-Fast Track Court) , Motor Accident Claims Tribunal,
Pudukkottai.

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.344 of 2013

30.11.2022