



C.M.A.Nos.1161 and 1162 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1161 and 1162 of 2018
and C.M.P.Nos.9543 and 9544 of 2018

United India Insurance Co. Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal.

...Appellant in both appeals

Vs.

1. R.Radhakrishnan
2. T.Alagesan

...Respondents in C.M.A.No.1161 of 2018

1. R.Thiagarajan
2. T.Alagesan

...Respondents in C.M.A.No.1162 of 2018

PRAYER in M.C.O.P.No.1161 of 2018: The Civil Miscellaneous Appeal filed u/s.173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 07.10.2017 made in M.C.O.P.No.135 of 2013 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Namakkal.

PRAYER in M.C.O.P.No.1162 of 2018: The Civil Miscellaneous Appeal filed u/s.173 of Motor Vehicles Act, 1988, against the judgment and the decree dated 07.10.2017 made in M.C.O.P.No.30 of 2013 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate Court),



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Namakkal.

In both Appeals

For Appellants : Mr.C.P.Paranthaman

For Respondents : No Appearance [R1]

R2 (died)

COMMON JUDGMENT

These Civil Miscellaneous Appeal has been filed against the decree and judgment dated 07.10.2017 made in M.C.O.P.Nos.135 of 2013 and 30 of 2015 on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate Court), Namakkal.

2. It is the case of the claimants that on 02.01.2011 at about 4:30 a.m. when the claimant in M.C.O.P.Nos.135 of 2013 and the claimant in M.C.O.P.No.30 of 2015 were proceeding in the vehicle as driver and pillion rider in the vehicle bearing registration No.TN 48 D 4111 in Karur to Vellore road, the lorry bearing registration No.TN 28 AD 8985 driven by its driver in a rash and negligent manner dashed against the vehicle in which the claimants were travelling in which the claimants sustained grievous injuries and were hospitalized as in patients and thereafter admitted for



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higher medical procedures for the injuries sustained, the claimants have filed the respective claim petition claiming compensation.

3. Before the Tribunal, the claimants examined P.W.1 to P.W.3 and marked 14 documents viz., Ex.P.1 to Ex.P.14. The respondents examined R.W.1 and R.W.2 and marked two documents viz., Ex.R1 and R2. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.1,81,100- as compensation under various heads in M.C.O.P.No.30 of 2013 and a sum of Rs.1,89,400/- as compensation in M.C.O.P.No.135 of 2013 in favour of the claimants. Aggrieved by the same, the present appeals have been filed by the appellant/ Insurance Company.

4. The learned counsel appearing for the appellant/insurance company submitted that the F.I.R, Ex.P1 which was registered on 06.1.2011 was closed as mistake of fact which is also evidenced by Ex.R1 and the evidence of R.W.1. It is the further submission of the learned counsel that the driver of the two wheeler namely claimant in M.C.O.P.No.30 of 2013 has not marked the driving licence which shows that he is not in possession of a



valid driving licence. Therefore, he is a tortfeasor and not entitled to claim compensation. It is the further submission of the learned counsel that the petition under Section 166 of the Motor Vehicles Act is maintainable only if negligence is proved and in case no charge sheet is filed against the insured lorry driver, the said petition is not maintainable. It is further submitted that the Tribunal erroneously fixed the disability in Ex.P12 which was issued by P.W.3 at 40% for an injury which is not in this schedule and the award of compensation of Rs.1,20,000/- under the head permanent disability which is highly excessive. The learned counsel for the appellant submits that the compensation awarded by the Tribunal under both the claim petitions is highly excessive and the same deserves interference.

5. Though notice was served on first respondent, none appeared on his behalf. Considering the pendency of these appeals this Court is inclined to dispose of the same based on the materials available on record.

6. Heard the learned counsel for the appellant and perused the materials placed on record.



WEB COPY 7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The main ground of attack is that F.I.R. which was registered against the lorry driver has been referred to mistake of fact and therefore the negligence having not been proved against the offending vehicle, the claimants would not be entitled for any compensation. Though such a contention has been advanced by the learned counsel for the appellant, the same cannot be countenanced for a simple reason that initially the F.I.R. was registered against the second respondent which had caused the accident. Merely because the said F.I.R. at the later point of time for the reasons best known to Law Enforcing Agency has been closed as mistake of fact cannot hold the basis that the the vehicle was not involved in the accident. The evidences of P.W.1 and P.W.2 who are the injured claimants clearly shows that it is the offending vehicle which had dashed against them.

8. Further F.I.R., Ex.P1 which has been registered on the complaint of the brother of one of the claimants has clearly spelt out the registration



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number of the vehicle which has caused the accident. There is no material to show that the final report which has been filed by the Law Enforcing Agency with regard to the said accident has been accepted by the criminal court or not and no material has been placed by the insurance company / appellant nor any oral evidence has been referred as mistake of fact has been accepted by the Court of competent jurisdiction. Therefore, merely because the F.I.R. has been registered against the second respondent has been closed as a mistake of fact alone cannot be the basis to reject the claim of the claimants seeking compensation. There is ample evidence in the form of oral and documentary evidence to show that the offending vehicle which was the reason for the injury suffered by the claimants.

9. The findings recorded by the Tribunal with regard to the liability of the appellant herein to compensate the claimants is wholly sustainable and the same does not require any interference. Insofar as the compensation under various heads are concerned, though it is claimed by the appellant to be excessive, on a perusal of the same reveals that all the heads are just and reasonable and permanent disability has been quantified by adopting



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percentage method which also is on the basis of the well laid ratio in the catena of decisions. Therefore, the compensation by no means can be held to be excessive and the same is also confirmed.

10. With the above observation, these appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

31.10.2023

Speaking Order / Non Speaking Order : Yes/No
Index : Yes/No
NCC : Yes/No

To

1. Motor Accident Claims Tribunal (III Additional District Court)

Kallakurichi.

2. The Registrar, City Civil Court, Chennai.

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M.DHANDAPANI,J

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