



CMA.No.2796 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2796 of 2014

Narayanan @Narayanappa

...Appellant

Vs.

1.B.Abdulla

2.The Divisional Manager,

The New India Assurance Company Limited,

Divisional Office,

K.S.Swamy Complex,

No.14/7, Bagalur Road,

Hosur -635 109.

(Respondent - 1 become exparte before

the Tribunal)

.....Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor

Vehicles Act, 1988 is filed against the Award and decree in MCOP.No.162 of

2006 dated 15.07.2011 on the file of the Motor Accident Claims

Tribunal/Principal Subordinate Judge, Krishnagiri.

For Appellants : Mr. Mukund R. Pandiyan, Advocate

For Respondent-1 : Set exparte

For Respondent-2 : Mr.K.Padmanabhan Advocate



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JUDGMENT

This Civil Miscellaneous Appeal is filed against the Award and decree in MCOP.No.162 of 2006 dated 15.07.2011 on the file of the Motor Accident Claims Tribunal/Principal Subordinate Judge, Krishnagiri.

2. For the sake of convenience, the parties are referred to as per their ranking before the Motor Accident Claims Tribunal,

3. The case of the petitioner/appellant is that the claimant, on 13.03.2003, while travelling in an Auto bearing Registration No.TN-27- 7103 from Korlathoddi to Veppanapalli Hospital, the driver of the auto was driving it in a rash and negligent manner and dashed against a Tractor coming in the opposite direction and caused the accident due to which the petitioner sustained grievous injuries. The petitioner was admitted in the Government Hospital, Krishnagiri for treatment. Thereafter, he took further treatment at Sanjai Gandhi Hospital, Bangalore. He was admitted as an in-patient from 14.03.2003 to 05.04.2003 and taking periodical treatment privately. The case has been registered against the driver of the Tractor bearing Regn.No.TN-29-R-1127 in Cr.No.75 of 2003 under Sections 279,



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337 and 338 of IPC mistakenly. Claiming compensation of a sum of Rs.5,00,000/-, the petitioner/claimant has filed a petition in MCOP.No.162 of 2006 before the Motor Accidents Claims Tribunal, Krishnagiri.

4. Controverting the same, the second respondent/Insurance Company has filed a counter affidavit denying the allegations made by the petitioner. The Insurance Company denied that the accident occurred due to the driver of the auto rickshaw stating that it was the tractor which came in the opposite direction without observing the rules of the road in a rash and negligent manner and hit against the auto rickshaw and caused the accident. The Veppanapalli police also registered the case against the driver of Tractor. The complainant is none other than the friend of the petitioner who also travelled in the auto. But the petitioner with a view to make unlawful gain given a twisted version. He further submitted that the injuries sustained by the petitioner are simple in nature. Since the accident had occurred only due to the negligence of the driver of the Tractor, the Insurance Company is not liable to pay any compensation to the petitioner and thus he sought for dismissal of the claim petition.



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5. Before the Tribunal, on the side of the petitioner, the petitioner himself was examined as P.W.1 and one Doctor was examined as P.W.2 and 8 documents were marked as Exs.A1 to A8. On the side of the second respondent / Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and 2 documents were marked as Exs.B1 and B2.

6. The Tribunal, after examining the witnesses and analyzing the materials available on record, awarded a compensation of Rs.1,13,336/- payable by the Insurance Company as insurer of the owner of the vehicle with interest at the rate of 6% per annum from the date of petition till the date of deposit along with costs.

7. Not satisfied with the quantum of compensation, the petitioner/ claimant has filed the present Civil Miscellaneous Appeal.

8. Heard the submissions made on either side and perused the materials available on record.



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9. The learned counsel for the claimant has submitted that due to the said accident, the claimant suffered grievous injuries. But the compensation awarded by the Tribunal is inadequate and on the lesser side. The Tribunal ought to have granted more compensation. Hence, he prays to allow the Civil Miscellaneous Appeal.

10. On the other hand, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has rightly considered the materials and evidences and has awarded the just and fair compensation and hence, the same does not require any interference by this Court. Hence, he prays for dismissal of the Civil Miscellaneous Appeal.

11. The Tribunal adjudicated the issues with reference to the documents and evidences. The Tribunal made a clear finding that the accident occurred only due to the rash and negligent driving of the driver of the Tractor. A perusal of Ex.A1 shows that the driver of the Tractor drove the vehicle in a rash and negligent manner and dashed against the right side of the auto rickshaw in which the petitioner travelled. A perusal of Ex.A2 /Wound Certificate would reveal that the grievous injuries sustained by the



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petitioner. Ex.B1/charge sheet filed before the Judicial Magistrate, Krishangiri, is against the driver of the Tractor. The pleadings and evidences of the petitioner is against his own complaint Ex.A1. A perusal of Ex.A4 would reveal the name of the registration authority of the auto rickshaw as RDO, Hosur. It is seen that the auto rickshaw had permit to ply over 30 kms within Hosur and in violation of permit condition, it plied out and as there is a dispute over the manner of the accident, the driver is to be examined as laid down in 2011 TAC page 61 and the claim petition is filed against the owner of the auto rickshaw. Even as per the petitioner's FIR, it is the driver of the tractor that caused the accident and hence it is not maintainable. As it had plied at the time of accident at Krishangiri, it is a policy violation.

12. In view of the foregoing reasons, this Court is of the considered opinion that the Tribunal has rightly granted a reasonable amount of compensation to the petitioner / claimant. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal has rightly fixed liability on the Insurance Company as insurer of the first respondent to pay compensation to the petitioner and awarded an overall compensation of Rs.1,13,336/- with interest at 6% per annum from the date



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of petition till the date of deposit. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.

13. In view of the above, nothing survives for further adjudication in the Civil Miscellaneous Appeal and the same is accordingly dismissed. No costs.

21.04.2023

Index: Yes/No

Internet : Yes/No

gv

To

1.The Motor Accident Claims Tribunal/
Principal Subordinate Judge,
Krishnagiri.

2. The Section Officer,
VR Section,
High Court, Madras



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A.A. NAKKIRAN.J.

gv

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