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C.M.A.No.2923 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2023

CORAM

THE HON'BLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2923 OF 2014

Sathish Kumar

... Appellant

..Vs..

1.G.Nagarajan

2.United India Insurance Co. Ltd.,
R.P.R. Complex, Bypass Road,
Near Government Hospital,
Dharmapuri – 636 701.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 05.10.2010 made in M.C.O.P.No.919 of 2008 on the file of the Motor Accident Claims Tribunal (Additional Subordinate Judge) at Krishnagiri.

For Appellant : Mr.T.Panchatsaram

For Respondent-2 : Ms.I.Malar

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award and decree dated 05.10.2010 made in M.C.O.P.No.919 of 2008 on the file Motor Accident Claims Tribunal (Additional Subordinate Judge) Krishnagiri.



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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 petitioner / claimant, on 26.11.2007 at about 10.00 pm., while proceeding in his Yamaha Bike bearing Registration No.TN24-C-6854, on Mathur to Krishnagiri National Highways, near Billakottai Bus stop, two persons suddenly crossed the road from one side to the other and unaware of their sudden cross, the petitioner tried to control the bike by applying sudden brake, but the bike dashed against them and then dashed a Tamarind tree, out of which, the petitioner sustained multiple injuries all over his body. The petitioner was admitted in the Government Hospital, Krishnagiri for treatment. Thereafter, he took further treatment at Manipal Hospital, Bangalore. Claiming compensation of a sum of Rs.2,00,000/-, the petitioner/claimant has filed a petition in MCOP.No.919 of 2008 before the Motor Accidents Claims Tribunal at Krishnagiri.



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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 the period of treatment and the expenses incurred by the petitioner. The petitioner also did not possess valid and effective driving license to ride the motor-cycle at the time of accident and no premium was paid to cover the risk of the rider of the said motorcycle and thus, sought for dismissal of the claim petition.

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 10 documents were marked as Exs.P1 to P10. On the side of the second respondent / Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and 4 documents were marked as Exs.R1 to R4.

6.The Tribunal, after examining the witnesses and analyzing the materials available on record, awarded a compensation of Rs.1,89,300/- (Rupees One Lakh Eighty Nine Thousand Three Hundred Only) payable by



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the first respondent / 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.

9. The learned counsel for the petitioner / 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. The learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has rightly considered the



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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 petitioner / claimant. Though the vehicle is properly insured and having insurance policy on the date of accident, the second respondent / Insurance Company denied its liability on the ground that the petitioner himself is a tortfeasor and for his own wrong, he cannot claim any compensation from the Insurance Company. The petitioner is not a third party, so far as the second respondent is concerned and the second respondent / Insurance Company is liable to indemnify the loss caused to the first respondent only with regard to the third party. Further, the first respondent / owner of the vehicle, without ascertaining the details as to whether the petitioner is having proper driving license or not, negligently permitted the petitioner to



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drive the vehicle and caused the accident for himself. Hence, the second respondent / Insurance Company is not liable to pay any compensation to the petitioner. The Tribunal relying on the judgments of the Hon'ble Supreme Court as well as this Court, has held that the first respondent is liable to pay a compensation to the petitioner / claimant.

12.A perusal of the records would reveal that the petitioner / claimant has not filed the claim petition properly with the separate heads in the Tribunal itself and not produced proper medical bills. But he claimed an overall compensation of Rs.5,00,000/-. Considering the facts and circumstances of the case and upon perusing the records, the Tribunal has rightly fixed liability on the first respondent to pay compensation to the petitioner and awarded an overall compensation of Rs.1,89,300/- with interest at 6% p.a., from the date of petition till the date of deposit. Therefore, this Court is not inclined to interfere with the order passed by the Tribunal.



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

03.03.2023

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
gv

To

1. The Motor Accident Claims Tribunal
(Additional Subordinate Judge)
Krishnagiri.
2. The Section Officer,
High Court, Madras.



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A.A.NAKKIRAN., J.

gv

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