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C.M.A.No.4155 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4155 of 2019
and C.M.P.No.23481 of 2019

The Manager,
M/s.Bharti AXA General Insurance Co.Ltd.,
Pride Quadra, No.30,
3rd Floor, Nelly Road, Hebbal,
Bangalore-24

... Appellant/2nd Respondent

Vs

1.K.Mahendiran

... 1st Respondent/Petitioner

2.Francis Benny

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and decree dated 14.03.2019 made in M.C.O.P.No.94 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Krishnagiri.

For Appellant

... M/s.S.Arun Kumar

For Respondents

... Notice not ready [R1]

... No Appearance [R2]



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JUDGMENT

Challenging the impugned award dated 14.03.2019 passed by the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Krishnagiri in M.C.O.P.No.94 of 2019, the Appellant-Insurance Company has filed the present appeal.

2. It is the case of the claimant that on 18.08.2012, when the claimant along with his friend was proceeding in the Motor cycle bearing Reg.No.KA-53-X-9405, at about 10.30 p.m., on the Hosur, Krishnagiri National Highway, the car belonging to the 2nd Respondent and insured with the Appellant-Insurance Company bearing Reg.No.KA-03-MP-1984 driven by its driver in a rash and negligent manner dashed against the vehicle driven by the claimant when the claimant tried to overtake the vehicle. Due to the said accident, the claimant sustained fracture and suffered grievous injuries all over the body. Immediately after the accident, the claimant was taken to the Government hospital for treatment and is still continuously taking treatment. Therefore, claiming compensation at the hands of the insurer, the claim petition was filed



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by the claimant.

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3. Before the Tribunal, the claimant examined himself as P.W.1 and marked viz., Ex.P.1 to Ex.P.8. No witnesses were examined nor any documents were marked on the side of the respondents and the Court Document Ex.C.1 has been marked by the Tribunal. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.6,04,336/- and fastened the liability on the Appellant-Insurance Company and the 2nd Respondent/Owner of the car. Aggrieved by the said award dated 14.03.2019, the Appellant-Insurance Company has filed the present appeal questioning the liability as well as the quantum of compensation fixed by the Tribunal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that the accident had occurred on the left side of the car and therefore, it clearly reveals that the claimant had tried to overtake the vehicle on the left hand side which is against the traffic rules and the necessary and thus it



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is evident that it is only the claimant who had driven the vehicle in a rash and negligent manner. Further, the same has also been reflected in the FIR and therefore fastening of liability and negligence on the driver of the car is wholly erroneous and hence the order of the Tribunal requires interference. It is the further submission of the learned counsel appearing for the appellant that when the doctor had assessed 45% of functional disability, the adoption of multiplier method while granting compensation under the head disability is wholly erroneous. Accordingly, the impugned award of the Tribunal requires interference.

5. Though notice was served on the 2nd Respondent and his name printed in the causelist, none appeared on behalf of the 2nd Respondent. Considering the pendency of the Appeal which is of the year 2019, this Court is inclined to dispose of the same based on the materials available on record.

6. This Court heard the learned counsel appearing for the Appellant-Insurance Company and perused the materials available on record.



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7. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. It is case of the claimant that when he tried to overtake the vehicle on the left side, the vehicle suddenly turned on the left side due to which the claimant was thrown out of the vehicle and he sustained injuries. According to the Motor Vehicle Rules and the traffic that has to be followed, overtaking on the left hand side is prohibited, however, mere prohibition does not absolve the driver of the car from not giving signal before turning. In the case on hand, there is no material either in the FIR or through any independent evidence that the driver of the car had given proper signal before turning left though the claimant had tried to overtake on the left which is not proper. Equally the act of the driver of the vehicle in not signaling his left hand turn is not proper however, by properly appreciating the above, the Tribunal has rightly fixed 75% of the negligence on the part of the driver of the 2nd respondent's vehicle and 25% on the claimant. Therefore, the said finding does not require any interference as it is just and reasonable.



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8. Insofar as the fixation of disability is concerned, the Tribunal based on the Ex.P-2, the disability certificate and also based on the Ex.C1, has fixed the disability at 40%. However, the appellant has not placed any material contra to the above to prove that the claimant has not suffered particular percentage of disability, the procedure adopted by the Tribunal for fixing the disability based on the said fixation cannot be said to erroneous. The Tribunal has awarded compensation under the head disability by adopting multiplier method in view of the fact that disability had been assessed at 40% which is a permanent disability and hence the adoption of multiplier method is proper. Therefore, the compensation awarded under the head disability does not require any interference. Insofar as the compensation awarded under other heads, this Court finds it to be just and reasonable as the same has been fixed based on the oral and documentary evidence. Such being the case, the compensation being just and reasonable does not require any interference.

9. Accordingly, the Appeal is dismissed and the impugned award in



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M.C.O.P.No.94 of 2019 stands confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous Petition stands closed.

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Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

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To

- 1.The Motor Accident Claims Tribunal Cum
Additional District and Sessions Judge,
Krishnagiri.
- 2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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