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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.134 of 2022

M.Loganathan .. Appellant

Vs.

1.G.K.Mani

2. The Divisional Manager
Oriental Insurance Company Ltd.,
No.547, Gandhi Road, 1st Floor,
Kanchipuram pondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.11.2019 passed in MCOP No.830 of 2015 on the file of Motor Accident Claims Tribunal, District and Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram.

For Appellant	:	Mr.C.Prabakaran
For Respondents	:	No appearance for R1
		Mr.P.Kandasamy for R2

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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant challenging the award dated 29.11.2019 passed in MCOP No.830 of 2015 on the file of Motor Accident Claims Tribunal, District and Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram.

2.The appellant filed M.C.O.P. No.830 of 2015 on the file of the Motor Accident Claims Tribunal, District and Sessions Judge, Additional District Court (Fast Track Court), Kanchipuram claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.01.2007.

3. According to the appellant, on 21.01.2007, while he was driving the Tempo Van bearing Regn.No.TN32 T 1189 alongwith passengers proceeding from Gondhavadi Village towards Puttaparthi Village, Ananthapur District, at about 1.45 p.m, on NH-7 Road, near Muntimudugu Road cross, Ananthapur

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District, while crossing the Bamidi Bridge, hit against the Tanker Lorry which was coming in the opposite direction. In the above said accident, the appellant sustained multiple grievous injuries and hence he filed the claim petition claiming compensation against the respondents.

4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent filed counter statement denying the averments made in the claim petition. The appellant alone drove the tempo van in a rash and negligent manner and dashed against the tanker lorry. The appellant being the tortfeasor is not entitled to claim compensation. The appellant has not impleaded the owner and insurer of the tanker lorry and hence the claim petition is bad for non-joinder of necessary parties. The 2nd respondent denied the age, avocation, income of the appellant and nature of injuries sustained in the accident. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

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6. Before the Tribunal, the appellant examined himself as PW2 and claimant in other MCOP No.301 of 2012 was examined as PW1. Doctor was examined as PW3. Eight documents were marked as Exs.P.1 to Exs.P.8. Neither document was marked nor witness was examined on the side of the 2nd respondent.

7. The Tribunal after considering the evidence and documents filed on the side of the appellant, directed the 1st respondent / owner of the tempo van to pay a sum of Rs.1,10,000/- as compensation to the appellant.

8. Challenging the award of the Tribunal, the appellant has filed the instant appeal.

9. The learned counsel appearing for the appellant submitted that though the Tribunal found that the appellant is entitled to compensation of Rs.1,10,000/-, had erroneously directed the first respondent, owner of the

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tempo van to pay the compensation amount. The learned counsel further submitted that the insurance policy liability covers "paid driver". In any case, the Tribunal ought to have directed the 2nd respondent / Insurance company to pay the compensation to the appellant at the first instance and recover the same from the 1st respondent, owner of the vehicle. The learned counsel also submitted that even assuming that the 2nd respondent/Insurance Company is not liable to pay compensation, in the interest of justice, it is desirable that a direction to be issued to the 2nd respondent / Insurance Company to pay and recover, as it would be easy for the Insurance Company to recover it from the 1st respondent/owner of the vehicle.

10. The learned counsel further submitted that due to the injuries sustained in the accident, the appellant suffered functional disability and the Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The Tribunal failed to award compensation towards attender charges and loss of amenities. The compensation awarded by the Tribunal is meagre and prayed for allowing the appeal.

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11. Per contra, the learned counsel for the 2nd respondent / Insurance Company submitted that there is no infirmity in the award of the Tribunal directing the 1st respondent to pay the compensation. The appellant, being the tortfeasor is not entitled to claim compensation and therefore prayed for dismissal of the appeal.

12. Though notice has been served on the first respondent and his name has been printed in the cause list, there is no representation for him either in person or through counsel.

13. Heard the learned counsel appearing for the appellant as well as 2nd respondent and perused the materials available on record.

14. The only issue involved in this appeal is whether the second respondent/Insurance Company is liable to pay compensation to the appellant, as per the terms of the insurance policy.

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15. From the materials on record, it is seen that as per Ex.P7 – Insurance policy, the liability towards paid driver is covered under the policy. Be that as it may, the admitted fact is that the appellant is the driver employed under the 1st respondent. It is seen from the motor insurance policy issued by the second respondent, that the paid driver is covered under the Insurance Policy. The relevant clause reads as follows:

"ADD: LL PAID DRIVER, CONDUCTOR, CLEANER – IMT – 28"

16. Therefore, this Court is of the view that the finding of the Tribunal fixing the liability on the first respondent/owner of the insured vehicle to pay the compensation is erroneous. The second respondent / insurance company cannot be exonerated from its liability in the facts and circumstances of this case. Therefore, the finding of the Tribunal directing the 1st respondent to pay the compensation to the appellant is set aside. As regards the quantum of compensation, this Court is of the view that the compensation awarded by the Tribunal is just and reasonable and hence the same does not warrant any

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interference by this Court.

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,10,000/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit is hereby confirmed. The second respondent/Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

28.07.2023

rgr

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

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SUNDER MOHAN, J

rgr

To

1. The District and Sessions Judge,
Additional District Court (Fast Track Court),
Motor Accident Claims Tribunal,
Kanchipuram.

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

C.M.A. No.134 of 2022

Dated: 28.07.2023

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