



Judgment dated 13.09.2023 in
C.M.A.No.1978 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1978 of 2019

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A.Moorthy

.. Appellant

Vs.

1. J.Manoharan

2. M/s.Reliance General Insurance Company,
Balmar Lawne House,
628 Anna Salai,
Teynampet,
Chennai-600 018.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 22.12.2014 passed in M.C.O.P.No.30 of 2012 on the file of the Motor Accidents Claims Tribunal, Tambaram.

For appellant : Mr.T.Sivagnanasambandan

For respondents: No appearance for R-1 (Set ex-parte before the Tribunal)

M/s.C.Bhuvanasundari for R-2

JUDGMENT

The appellant is the claimant who has filed Claim Petition in M.C.O.P.No.30 of 2012 before the Motor Accidents Claims Tribunal, Tambaram.

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The Tribunal, by Award dated 22.12.2014, granted compensation of Rs.1 lakh to the claimant. Challenging the same, the claimant is before this Court.

2. The claimant sustained injuries in a road accident that took place on 07.08.2011 at about 20.45 hours at Medavakkam Main Road, Opposite to Usha Jolly Works Cement shop, due to the careless driving of the first respondent.

3. Learned counsel for the appellant/claimant submitted that the second respondent/Insurance Company remained ex-parte before the Tribunal and the appellant/claimant claimed Rs.10 lakhs, but the Tribunal, without considering the facts and circumstances, granted only Rs.1 lakh, which is very meagre and it is not 'just' compensation. Learned counsel further submitted that the claimant is the owner of the auto and engaged driver for driving the auto and while travelling in the auto, he sustained injuries only due to rash and negligent driving of the driver. Hence, he filed the claim petition. The said auto was insured with the second respondent/Insurance Company and hence, the second respondent is liable to pay compensation. Further, the Tribunal failed to consider the materials available on record and only ordered Rs.1 lakh as compensation, which warrants interference by this Court.



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4. Before the Tribunal, the second respondent/Insurance Company had not filed counter, but before this Court, the second respondent/Insurance Company has filed counter objections denying the claim of the claimant.

5. Learned counsel for the second respondent-Insurance Company submitted that no opportunity was given to the second respondent, though they remained ex-parte before the Tribunal and the Tribunal has not discussed anything about the merits and the impugned order is not a speaking order.

6. Learned counsel for the second respondent-Insurance Company further submitted that the Insurance Company has filed an application to set aside the ex-parate decree before the Tribunal, but, as all the records have been sent to this Court, the ex-parte application could not be taken on file by the Tribunal.

7. Heard both sides and perused the materials available on record.

8. The appellant/claimant has filed the claim petition under Section 166 of the Motor Vehicles Act before the Tribunal stating that while travelling in the auto, he sustained injuries and at that time, the vehicle was insured with the second respondent-Insurance Company. Though the Tribunal considered that



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there was no objection and no counter having been filed, coupled with the fact that the insurance policy copy was also marked as an exhibit and based on the same, at the time of accident, the policy was in force, and therefore, the Tribunal granted Rs.1 lakh as compensation. Since the claimant has not produced any disability certificate and in the absence of any other materials, the Tribunal awarded only Rs.1 lakh. Though the second respondent/Insurance Company has stated that opportunity was not given to them before the Tribunal and they remained ex-parte before the Tribunal, and they have filed the petition praying to set aside the ex-parte order and when the counsel was asked about the same, she stated that only in the year 2023, the petition to set aside the ex-parte order was filed and that the accident took place on 07.08.2011. The claim petition was filed in the year 2012, i.e. nearly after two years after the ex-parte order was passed in 2014, from which it is clear that the Insurance Company has not taken any steps to set aside the ex-parte order and they were simply waiting all along and this appeal is pending from the year 2019, i.e. for nearly five years they have not taken steps and therefore, it clearly shows that the Insurance Company is not really interested to conduct the case.

9. On a perusal of the records, it shows that though the claimant was examined as P.W.1 except xerox copies, namely Exs.P-1 to P-8 were marked, no



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other material had been produced and moreover, documents like disability certificate, had not been marked before the Tribunal. In the absence of the same, the Tribunal has generously considered the claim of the appellant/claimant and awarded Rs.1 lakh. No other acceptable materials having been produced even before this Court, this Court does not find any perversity in the impugned Award passed by the Tribunal.

10. Finding no merits, while confirming the impugned Award of the Tribunal, this appeal is dismissed. The second respondent/Insurance Company is directed to deposit the entire compensation as awarded by the Tribunal with accrued interest and costs as awarded by the Tribunal, to the credit of M.C.O.P.No.30 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Tambaram, within a period of 20 days from the date of receipt of a copy of this judgment and on such deposit, the claimant is permitted to withdraw the amount including accrued interest and costs without filing any formal application. The Tribunal is directed to pay the said amount of Rs.1 lakh including accrued interest and costs as awarded by the Tribunal through NEFT to the Bank account of the claimant, without any delay, since the claimant is waiting from 2012 and 11 years having now been passed and while depositing the Award amount, the Tribunal shall follow the judgment of a Division Bench of

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this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others). There shall be no order as to costs in the present appeal.

13.09.2023

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To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
Tambaram.
2. Section Officer,
V.R.Section,
High Court,
Madras.

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