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C.M.A.No.2118 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2118 of 2019
and C.M.P.No.8232 of 2019

The Manager,
The Oriental Insurance Company Ltd.,
Hub 3rd Party claims, Vijayalakshmi Complex,
First Floor, No.32/13, Fase No.2,
Sathuvachary, Vellore.

... Appellant/Respondent-II

Vs.

1.Murugan

... Respondent/Petitioner

2.Selvam

...Respondents/Respondent-I

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 28th day of November 2017, made in M.C.O.P.No.69 of 2016, on the file of Motor Accident Claims Tribunal, (Special Sub Court), Tiruvannamalai

For Appellant : Mr.K.Vinod
for M/s.Elveera Ravindran

For Respondents : No Appearance [R1 & R2]



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JUDGEMENT

WEB COPY Challenging the impugned award dated 28.11.2017 passed by the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai in M.C.O.P.No.69 of 2016, the Appellant-Insurance Company has filed the present appeal questioning the liability as well as the quantum of compensation awarded by the Tribunal.

2. On 30.08.2015, when the claimant was walking on the extreme left side of the road, Eicher van bearing Registration No.TN050-2628 belonging to the 1st respondent and insured with the 2nd respondent, which was driven in a rash and negligent manner, dashed against the claimant thereby he sustained greivous injuries. In view of the injuries sustained, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai in M.C.O.P.No.16 of 2016 claiming compensation of Rs.20,00,000/- under various heads.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P-1 to Ex.P-12. On the side of the respondents, R.W.1, R.W.2 & R.W.2 were examined and marked Ex.R-1 to Ex.R-4 and the Medical Report was marked as Ex.C1. After adjudication, the Tribunal had awarded a sum of



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Rs.5,49,600/- as compensation to the claimant. Aggrieved by the said award,

the Appellant-Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant-Insurance company denied their liability to indemnify the claimant stating that the date of accident is on 30.08.2015, however, the FIR was registered only on 26.09.2015 which is after a lapse of around one month. Though the FIR was registered as against the 1st respondent driver, later, upon investigation, the said FIR was referred to as mistake of fact. However, without considering the same, the Tribunal had erroneously fixed the negligence on the part of the Appellant which is not sustainable. Further, the quantum of compensation awarded towards functional disability by applying the multiplier method is highly excessive and so also the compensation under other heads which requires reconsideration. Accordingly, he prayed for allowing the appeal.

5. Though notice was served on the respondents 1 & 2 and their name printed in the causelist none appeared on behalf of the respondents today. Considering the pendency of this Appeal, this Court is inclined to dispose of the same based on the materials available on record.



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6. The factum of the accident is not disputed by the parties. Therefore,

WEB this Court is not entering into the said aspect. However, the Insurance Company has challenged the liability to pay on account of the negligence fixed on the 1st respondent. However, the appellant challenges the finding with regard to negligence on the ground that the FIR was filed after a lapse of almost a month, which is clearly an afterthought with an intention to get compensation from the insurance company, which has, after investigation been referred to as mistake of fact. However, it is to be pointed out that merely because the FIR has been referred to as a mistake of fact alone cannot form the basis for repudiating the claim made by the claimant.

7. It has been the consistent view of the Courts that FIR is may not and need not contain all the details. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and*



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Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167).

The view expressed in the aforesaid decision has been reiterated by the Apex Court in ***State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324).***

8. Further, the Tribunal has passed an award based on the evidence of P.W.1. On perusal of the impugned award, it is seen that necessary witnesses were not examined on the side of the respondents and that no contra evidence has been adduced by the Insurance Company in order to disprove the case of the claimant. In the absence of any contra evidence, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the driver of the 1st respondent's vehicle and the said findings of the Tribunal cannot be interfered with.

9. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal whereby the Tribunal, considering the age and income of the claimant, had fixed the notional income at Rs.6,000/- has awarded a sum of Rs.4,89,600/- (Rs.6000/- * 12 * 17 * 40%) under the Functional Disability by adopting multiplier method which cannot be said to be



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excessive. Further, considering the nature of injuries suffered by the claimant, the Tribunal has fixed the disability at 40% on the basis of the report issued by the Medical Board viz., Ex.C1 which cannot be interfered with. By no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

10. Further, this Court finds that a sum of Rs.50,000/- under the head Pain and sufferings; Rs.5,000/- under the head Transportation Expenses and Rs.5,000/- under the head Extra Nourishment is just and reasonable which does not require any interference.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 28.11.2017 made in M.C.O.P.No.69 of 2016 stands confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

09.11.2023

Index : Yes / No

Netrual Citation Case : Yes / No

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To

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- 1.The Motor Accident Claims Tribunal,
Special Sub Court,
Tiruvannamalai
- 2.The Section Officer, V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.

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