



Judgment dated 13.09.2023 in
C.M.A.No.3015 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.3015 of 2018
and
C.M.P.No.22867 of 2018
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National Insurance Company Ltd.,
Represented by its Manager,
Ambattur, Chennai.

.. Appellant

Vs.

1. Muniappanan
2. Chitharaj

.. Respondents

Civil Miscellaneous Appeal against the Award and decree dated
28.12.2011 made in M.C.O.P.No.168 of 2011 on the file of the Motor Accidents
Claims Tribunal, Chief Judicial Magistrate, Dharmapuri.

For appellant : M/s.N.B.Surekha

For respondents : No appearance



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JUDGMENT

The Insurance Company is the appellant herein. The first respondent is the claimant. The second respondent is the owner of the vehicle in question.

2. The claimant filed a claim petition in M.C.O.P.No.168 of 2011 on the file of the Motor Accidents Claims Tribunal/Chief Juicial Magistrate, Dharmapuri. The Tribunal, after enquiry, awarded compensation of Rs.2,41,400/-, against which the Insurance Company has filed the present appeal.

3. On 29.10.2010, the claimant and others were proceeding in Minidor vehicle and the claimant drove the said vehicle bearing Registration No.TN-29-H-2193 which belonged to the second respondent herein and insured with the appellant herein. The claimant drove the vehicle carefully observing all the Rules of the road and on that day, at about 16.15 hours, while the said vehicle was proceeding in Bangalore-Salem Bye-pass road at Savulooran Kottai, near Sakthivel Vidyalaya School, at that time, one unknown vehicle all of a sudden passed near the Minidor vehicle and on seeing that the driver of the minidor suddenly turned the same and it capsized on the road side. Due to the impact,

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the claimant sustained multiple injuries all over the body and was immediately taken to Government Hospital, Dharmapuri and after first-aid, he was taken to Ganga Medical College Centre, Coimbatore and was admitted there in as an in-patient from 30.10.2010 to 10.11.2010 and while he was in-patient, at that time, on 30.10.2010, there was resuscitation above the knee amputation right side and debredment of coarsely sutured wound over latral aspect of distal third left thigh and knee was performed and again on 02.11.2010, would debredment and SSG over left knee (lateral aspect) and after discharge, the claimant underwent periodical treatment in the said Ganga Hospital and even at the time of filing of the claim petition, he was undergoing treatment. The claimant prayed for grant of Rs.10,00,000/- as compensation before the Tribunal.

4. The Insurance Company filed counter before the Tribunal disputing the manner in which the accident had occurred and also contended that the claimant is capable of doing all his regular works as before the accident. The claimant had not produced any document to prove his income. It is also stated that the claimant has sustained only simple injuries and he had recovered fully. Thus, they prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimant examined himself as P.W.1 and one



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Dr.Krishnakumar was examined as P.W.2 and Exs.P-1 to P-7 were marked. No oral and documentary evidence was adduced on the side of the respondents before the Tribunal. The Tribunal, after enquiry, awarded the above said amount of compensation, against which, the Insurance Company has filed the present appeal.

6. Though notice has been served on both the respondents in this appeal, none appeared for them, even though their names are printed in the cause list.

7. Learned counsel appearing for the appellant/Insurance Company submitted that the claimant himself is a tort-feasor who had caused the accident and he has filed the Claim Petition under Section 166 of the Motor Vehicles Act before the Tribunal and when once the claimant himself admitted and when no other vehicle is involved in the accident in this case, and that as the claimant himself dashed on the barricade gate on the road, and when no other vehicle is involved, there is no other negligence on the part of the other person/vehicle involved. Thus, when the claimant himself has caused the accident, and he being a tort-feasor, the appellant/Insurance Company is not liable to pay the compensation, but the Tribunal fixed the liability on the appellant/Insurance



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Company, which warrants interference by this Court.

8. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

9. The claimant was examined as P.W.1. On a reading of the evidence of P.W.1, it is seen that he himself had admitted even in the chief examination that he himself dashed on the road side and even in the cross-examination, he has clearly admitted that he is the cause for the accident and only due to his own rash and negligent driving, the accident had occurred. Admission of a witness in the box is the best piece of evidence. When once in the facts and circumstances of the case, the claimant himself as P.W.1 had admitted that he is a tort-feasor, and hence, the appellant/Insurance Company is not liable to be indemnified, as he himself being the driver of the vehicle and for his own negligence, the accident in question had occurred.

10. In the above stated facts and circumstances and the submissions made by the learned counsel for the appellant/Insurance Company, the impugned Award passed by the Tribunal is set aside and the present appeal is allowed. The appellant/Insurance Company is permitted to withdraw the amount

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of compensation if any already deposited by them before the Tribunal. There shall be no order as to costs in this appeal. C.M.P. is closed.

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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Dharmapuri.
2. The Section Officer,
V.R.Section, High Court, Madras.



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