



C.M.A.No.2606 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.2606 of 2019

And

C.M.P.No.12567 of 2019

The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
No.12/2, Ground Floor,
Savitha Plaza,
100 Feet Road,
Puducherry – 5.

... Appellant

Vs.

1.Vinayagamurthy
2.R.Kumar

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.240 of 2008 dated 19.07.2017 on the file of the Motor Accidents Claims Tribunal Cum Principal Sub Judge at Pondicherry.

For Appellant : Mr.B.Sivakollapan
For Respondents : Mr.T.Ananthasekar for R1
R2 – Not Ready Notice

J U D G M E N T

The second respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has



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been filed seeking to set aside the award dated 19.07.2017 passed by the Motor Accidents Claims Tribunal Cum Principal Sub Judge at Pondicherry, in M.C.O.P.No.240 of 2008.

2.The brief facts of the case is that on 13.08.2007, at about 14.15 hours, the first respondent claimant was riding a motorcycle bearing Registration No.PY – 01 – AG – 1155 with his friend Kannan as pillion rider in 100 feet Road from South to North near Railway gate. At that time, a Car bearing Registration No.PY – 01 – AC – 6979 proceeding from West to East in a rash and negligent manner dashed against the motorcycle, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant / first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.1,63,250/- with interest at the rate of 7.5% p.a. from the date of petition, viz., 14.02.2008 till the date of payment and costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.



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4.The learned counsel appearing for the appellant submitted that the first respondent claim that after the accident, he was immediately taken to Government General Hospital, Puducherry and was discharged on 20.08.2007 with instruction to take higher treatment and thereafter, he was admitted as inpatient in Sri Sai Krupa Hospital, Puducherry and was discharged on 25.08.2007 with instruction to take higher treatment at Chennai, the complaint was filed before the law enforcing agency only on 25.09.2007.

5.The learned counsel appearing for the appellant further submitted that on the date of accident, the vehicle insured with the appellant was not available in Cuddalore and it was in Madurai in service station and to substantiate the same, R.W.2 – employee of the service centre and R.W.3 – owner of the vehicle were examined. However, for extraneous reason, the Tribunal fastened the liability on the appellant is not sustainable one.

6.Per contra, the learned counsel appearing for the first respondent submitted that admittedly the accident happened on 13.08.2007, at about 14.15 hours and the first respondent claimant was admitted in Government General Hospital, Puducherry on the



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same day at about 14.45 hours and he took treatment as inpatient till 20.08.2007 and thereafter, he was admitted in a private hospital and after recovery, the claimant filed the complaint before the law enforcing agency on 25.09.2007. Mere delay in filing the F.I.R., will not vitiate the entire claim petition.

7.The learned counsel appearing for the first respondent further submitted that Ex.R2 – copy of the letter dated 30.03.2008 addressed to the second respondent marked through R.W.1 clearly reveals that the offending vehicle started from Madurai at 2.30 p.m. and reached Cuddalore at 8.00 p.m. on 13.08.2007 and the said letter itself is sufficient to hold that the vehicle insured with the appellant was available in Cuddalore on the particular date. Hence, the impugned award warrants no interference.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

9.Admittedly, on 13.08.2007, at about 14.15 hours, the first respondent claimant was riding a motorcycle with his friend Kannan as



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pillion rider in 100 feet Road from South to North near Railway gate.

At that time, a Car proceeding from West to East in a rash and negligent manner dashed against the motorcycle, due to which, the first respondent sustained injuries.

10.Perusal of records disclose that the first respondent claimant was admitted in Government General Hospital, Puducherry on 13.08.2007 and he took treatment as inpatient till 20.08.2007 and thereafter, he was admitted in a private hospital and after recovery, the claimant filed the complaint before the law enforcing agency on 25.09.2007. Mere delay in filing the F.I.R., will not vitiate the entire claim petition. Further, Ex.R2 – copy of the letter dated 30.03.2008 addressed to the second respondent marked through R.W.1 clearly reveals that the offending vehicle started from Madurai at 2.30 p.m. and reached Cuddalore at 8.00 p.m. on 13.08.2007. The said letter itself is sufficient to hold that the vehicle insured with the appellant was available in Cuddalore on the particular date. Hence, the Tribunal after considering the factual aspects has rightly fastened the liability on the appellant. Further, the amount awarded by the Tribunal is also just and reasonable. Hence, the impugned award warrants no interference.



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11.The civil miscellaneous appeal stands dismissed. The award dated 19.07.2017 passed by the Motor Accidents Claims Tribunal Cum Principal Sub Judge at Pondicherry, in M.C.O.P.No.240 of 2008, is confirmed.

12.The appellant/ Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimant/ first respondent is permitted to withdraw the award amount, along with accrued interest and costs, on making proper and necessary application before the Tribunal.

13.The civil miscellaneous appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal Cum
Principal Sub Judge at Pondicherry.

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M.DHANDAPANI,J.
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