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C.M.A.No.4480 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4480 of 2019

United India Insurance Co. Ltd.,
Rep. by Branch Manager,
No.8-64, Vasudeva Road,
Near Indian Gas Office,
Kuppam – 517 425.

... Appellant

Vs.

1. S.Mani
2. V.Mohan Reddy

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgement dated 17.03.2016 passed in M.C.O.P.No.89 of 2014 on the file of Motor Accident Claims Tribunal, (Sub-Judge), Krishnagiri.

For Appellant : Mr.C.Paranthaman
Rep. by Rekha Roshini.G

For Respondents : Mr.G.Babu

JUDGEMENT

The Civil Miscellaneous Appeal has been filed to set aside the decree and judgement dated 17.03.2016 passed in M.C.O.P.No.89 of 2014 on the file



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of Motor Accident Claims Tribunal, (Sub-Judge), Krishnagiri.

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2. It is the case of the claimant that on 07.05.2012 at about 8:30 hours when the claimant was travelling in the Tempo bearing Registration No.AP 03 U 6003 along with the first respondent who acted as Driver cum owner of the vehicle of the first respondent, who drove the vehicle in a rash and negligent manner and hit against the stationary TATA mini Tempo bearing Registration No.AP 03 U 5875 parked on the left side due to which the claimant suffered multiple injuries and fractures. Claiming compensation at the hands of the second respondent, the claim petition has been filed.

3. Before the Tribunal, the appellant examined one witness viz., R.W.1 and marked one documents viz., Ex.R1. On the side of respondents they examined two witnesses viz.,P.W.1 and P.W.2 and marked 15 documents viz.,Exs.P1 to P.15. After adjudication, the Tribunal awarded a sum of Rs.8,27,374/- as compensation to the claimant / first respondent. Challenging the same, the present appeal has been filed by the appellant / insurance company.



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4. The learned counsel appearing for the appellant submits that the owner of the insurer of the parked vehicle have not been added as party respondents. The claim petition is not maintainable. It is the further submission of the learned counsel that the claimant being a gratuitous passenger in the vehicle, the terms of the policy does not cover compensation towards gratuitous passenger. Therefore, the compensation granted cannot be sustained.

5. Per contra learned counsel appearing for the respondent / claimant submit that the claimant was employed under the second respondent and he is not a gratuitous passenger and it is only because of the rash and negligent driving of the second respondent, the accident had occurred which facts have been clearly appreciated by the Tribunal while awarding the compensation. Therefore, no interference is called for.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the materials placed on record.

7. A perusal of the materials available on record reveals that the



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second respondent while driving the vehicle had lost control of the vehicle and hit the TATA mini tempo which was stationary and left parked on the left side.

The impact resulted in the injuries to the claimant / first respondent. The Tribunal has recorded a finding that the stationary vehicle was parked on the left side but the tail lights were not flashing which resulted in the accident. However, there is no whisper about the fact that the place was not lighted properly and therefore, the Tribunal has concluded that it was due to the rash and negligent driving of the second respondent the accident had happened.

8. Therefore on the aspect of negligence, the second respondent had been fastened with the negligence and therefore no interference is warranted. Insofar as the maintainability of the petition for non-addition of the insurer of stationary vehicle is concerned only if the claimant is held to be a gratuitous passenger, the question of adding the offending vehicle and the insurer would arise. However, in the case on hand, it is the stand of the claimant that he was employed under the second respondent. In the absence of any contra evidence that the claimant was not employed under the second respondent, the non-impleadment of the owner of the insurer of the offending vehicle would not be a ground to reject the claim of the claimant. Insofar as the question of liability is



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concerned, the main grievous of the appellant is that the claimant is a gratuitous passenger and therefore he is not entitled for compensation. However, it is the stand of the second respondent / owner of the vehicle that the vehicle along with two employees were fully insured with the appellant. In this regard, the deposition of R.W.1 assumes significance. R.W.1 who is the Senior Assistant of the Insurance Company has deposed that, the insurance coverage for the vehicle included two employees as well. The claimant having claimed to be the employee of the second respondent and said claimant have not been disproved in any manner by the appellant, necessarily under the scope of employee, the claimant would stand covered and he cannot be said to be a gratuitous passenger in the vehicle.

9. Appreciating all the above facts, the Tribunal has focused the liability on the appellant / insurer of the vehicle which required no interference. Insofar as the quantum of compensation is concerned, the Tribunal based on the disability certificate which has fixed the disability at 60% has taken the disability at 50% and computed the compensation, keeping in mind the nature and gravity of injury suffered by the claimant, the findings rendered in that regard are by no means perverse or illegal and the compensation awarded is not



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liable to be interfered with. Similarly, the compensation granted on the other heads are also fair and reasonable, accordingly, no interference is called for with the same.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. The Motor Accident Claims Tribunal, (Sub-Judge), Krishnagiri.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI,J

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