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C.M.A(MD)No.1460 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.07.2023

Pronounced On : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1460 of 2011

and

M.P.(MD)No.1 of 2011

Royal Sundaram Alliance Insurance
Company Limited,
46, Whites Road,
Chennai 600 014.

: Appellant / 2nd Respondent

Vs.

1.Rev.Father Sagaya Chinnappan

: 1st Respondent/ Petitioner

2.Arul Singh

: 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 31.03.2011 made in M.C.O.P.No.220 of 2007 on the file of the Motor Accident Claims (Principal Sub Court), Tenkasi.

For Appellant : Mr.S.Srinivasaraghavan

For Respondents : Mr.M.S.Suresh Kumar, for R1.

: Mr.Ananth C.Rajesh, for R2.



J U D G M E N T

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The Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, challenging the award dated 31.03.2011, passed in M.C.O.P.No.220 of 2007 on the file of the Motor Accident Claims (Principal Sub Court), Tenkasi.

2. The appellant/insurer, who was directed to pay compensation of Rs.4,75,277/- with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 28.05.2007, challenged the liability mulcted on it.

3. The case of the claimant is that on 28.05.2007, at about 02.30 am., the petitioner and his relatives, from Tirunelveli Railway Junction started for Velanganni in a Maruthi Omni Van bearing Registration No.TN-76-Z-5176 and when the vehicle was proceeding near TSR Nursery School, Maathankudi in Pudukkottai to Thanjavur Main Road at about 11.30 am., the Omni van driver had driven the vehicle rashly and negligently and the vehicle at that time losing control had dashed against the tamarind tree situated on the right side of the road and as a result of which, the petitioner



and others in the Omni Van had sustained serious injuries and that the accident was occurred only due to the rash and negligent driving of the Maruthi Omni driver.

4. It is the further case of the claimant that the petitioner and others were admitted in the Government Headquarters Hospital, Pudukkottai and after first aid, the petitioner was admitted in Madurai Government Rajaji Hospital and after taking inpatient treatment for two days, he was admitted in the Apollo Hospital, Madurai; that the petitioner had taken inpatient treatment for 30 days in the Apollo Hospital; that the petitioner had undergone a surgery below the hip portion and plate was implanted; that the petitioner has also suffered other injuries all over his body and that the petitioner was not in a position to do any work as before.

5. The defence of the appellant/insurer is that the first respondent allowed to carry more persons in the Maruti Van than permitting capacity of passengers; that the first respondent's driver was not having valid and effective driving license; that the accident was not occurred due to rash and negligent driving of the first respondent's driver and that since the first respondent owner of the vehicle has violated the permit conditions and also



the insurance policy conditions, the second respondent is not liable for the claim.

6. During enquiry, the claimant has examined himself as P.W.1 and one Jesline as P.W.2 and exhibited 20 documents as Ex.P.1 to Ex.P.20. The appellant/insurer has examined one witness Thiru.Meganathan as R.W.1 and exhibited 11 documents as Ex.R.1 to Ex.R.11.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 31.03.2011, directing the second respondent to pay compensation of Rs.4,75,277/- with interest at 7.5% per annum from the date of petition till the date of realization to the claimant. Aggrieved by the said award, the insurer has come forward with the present appeal.

8. When the matter is taken up for hearing today, the learned counsel for the appellant would submit that two other connected appeals were sent to Lok Adalat and in the Lok Adalat convened on 13.05.2023, awards were passed in C.M.A(MD)Nos.1260 and 1261 of 2014. He would further



submit that the insurer has already settled five claims with respect to the accident occurred on 28.05.2007.

9. The learned counsel for the appellant would further submit that the insurance policy of the vehicle involved in the accident covers only five persons including the driver; that the appellant/insurer has already settled the claim of the claimants in W.C.No.82 of 2007; M.C.O.P.No.116 of 2007 and M.C.O.P.No.114 of 2007, that the appellant is not expected to satisfy all the awards and that the Tribunal ought not to have fastened the liability on the appellant.

10. It is pertinent to note that the other injured in the accident, have already filed claim petition in M.C.O.P.No.114 of 2007; M.C.O.P.No.116 of 2007 and W.C.No.82 of 2007 and that the appellant/insurer has already settled the awards passed in above three cases. In order to prove the same, the appellant/insurer has produced the copies of the petitions filed in the above claim petitions, orders passed in W.C.No.82 of 2007 and the receipts for payment of the award amount and Ex.R.2 to Ex.R.9. The Tribunal, taking note of the fact that the insurer has already settled the awards passed in the connected claim petitions, has come to a decision that the second respondent is liable for the claim.



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11. Considering the entire facts and circumstances of the case and also the award passed by the Tribunal in connected matters, the finding of the Tribunal that the accident was occurred only due to the rash and negligent driving of Omini van driver cannot be found fault with.

12. As already pointed out, the insurer has disputed the liability mulcted on it, but not the quantum of compensation awarded at by the Tribunal. In the appeal memorandum, the insurer has not raised any ground challenging the quantum of compensation awarded at by the Tribunal.

13. In the present case, the petitioner had bone injury. Though the medical officer has fixed the liability at 60% , the Tribunal considering the medical evidence available on record has fixed the disability at 30%. Considering the nature of injury and the consequent disability, the trial Court has rightly applied the percentage method and granted Rs.60,000/- towards compensation for the disability suffered. The claimant has produced the medical bills under Ex.P.5 for Rs.2,23,496/- ; Ex.P.6 for Rs.850/-; Ex.P.7 for Rs.12,647/-; Ex.P.8 for Rs.1,786/-; Ex.P.9 for Rs.41,931/-; Ex.P.10 for Rs.2,684/-; Ex.P.13 for Rs.14,731/-; Ex.P.14 for



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Rs.6,850/-; Ex.P.15 for Rs.24,612/-; transport bills under Ex.P.17 for Rs.48,600/- and X-ray charges under Ex.P.20 at Rs.110/-; all totalling Rs.3,75,297/-.

14. Considering the above, amounts awarded under various heads by the Tribunal are very much reasonable and same cannot said to be excessive. The Appellant/Insurer has not raised any other ground to impugn the said award. Hence, this Court concludes that the above appeal is devoid of merit and the same is liable to be dismissed. Considering the other facts and circumstances, this Court further decides that the parties are to be directed to bear their own costs and the above points are considered accordingly.

15. In the result, the Civil Miscellaneous Appeal is dismissed. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is also dismissed.

01.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Motor Accident Claims (Principal Sub Court),
Tenkasi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1460 of 2011

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1460 of 2011
and
M.P.(MD)No.1 of 2011

01.08.2023