



C.M.A(MD)No.1316 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1316 of 2013

M/s.National Insurance Company Ltd.,
Through its Divisional Manager,
North Veli Street,
Madurai.

... Appellant/2nd Respondent

Vs.

1.Solaimalai (Died)

... Respondent/Petitioner

2.M.Noor Sherif

... Respondent/1st Respondent

3.Sarala Devi

4.Saravanakumar

5.Sivakumar

6.Sasikumar

... Proposed Respondents

(R3 – R6 are brought on record as legal heirs of the deceased R1 vide Court order, dated 14.12.2021 made in C.M.P(MD)Nos.7058,7059 & 7061 of 2021)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree, dated 30.03.2012 passed in M.C.O.P.No.2306 of 2005 on the file of Additional District Judge/Fast Tract Court No.2/MACT, Madurai.



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For Appellant : M/s.P.Malini

For Respondents : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed in M.C.O.P.No.2306 of 2005 on the file of Motor Accident Claims Tribunal, Madurai primarily on the ground of non-involvement of the vehicle.

2. According to the injured claimant, while he was on a religious Pathayathra on 16.02.2005, at about 08.30 p.m., a two wheeler belonging to the 1st respondent and insured with the 2nd respondent had dashed against him and caused serious injuries. He was admitted to Apollo hospital, Madurai for treatment.

3. According to the petitioner, he is in an immobilized condition from the date of the accident and he is bedridden. His left leg below the knee has been amputated. Hence, he prayed for a compensation of Rs.14,00,000/-.



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4. The insurance company had filed a counter contending that the vehicle belonging to the 1st respondent was not at all involved in the said accident and it has been put up in order to claim compensation from the 2nd respondent insurance company. They have also questioned the manner of accident and quantum of compensation as prayed for.

5. The tribunal after considering the oral and documentary evidence, had relied upon Exhibit P.1/F.I.R and the deposition of P.W.1 to arrive at a finding that the two wheeler belonging to the 1st respondent alone was involved in the accident. It further found that the accident had taken place only due to the rash and negligent driving on the part of the 1st respondent.

6. The tribunal further found that the disability is 70% as per Exhibit P.20 disability certificate. The tribunal proceeded to award a sum of Rs.4,30,000/- towards compensation. This award is under challenge in the present appeal.

7. The learned counsel appearing for the appellant had contended that there is a serious doubt with regard to the involvement of the two



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wheeler belonging to the 1st respondent. According to the learned counsel appearing for the appellant, the claimant is running an electrical shop in K.Pudur area in Madurai. The 1st respondent is also residing in the same locality. The accident is said to have taken place near Aruppukottai. It has not been explained why the two wheeler owned by a person in Madurai has met with an accident in Aruppukottai. Therefore, a serious doubt has been raised with regard to the involvement of the accident. Hence, she prayed for allowing the appeal.

8. Though the claimants have been served, there is no appearance either in person or through counsel.

9. It could be seen from the records that at the time of granting of interim stay, this Court has permitted the claimants to withdraw the 50% of the award amount.

10. It is contended on the side of the claimant that the accident has taken place on 16.02.2005 at about 08.30 p.m. Though immediately he was rushed to Apollo Hospital, F.I.R has been registered only after a period of 5 days. In the F.I.R, the vehicle belonging to the 1st respondent



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has been mentioned. According to the claimant, himself, his son and 25 other persons were on Padhayathra. However, no other 3rd party has been examined to prove the involvement of the vehicle. That apart, it is extracted in the cross-examination of P.W.1 that he is running an electrical shop in K.Pudur, Madurai. The address of the owner of the offending vehicle is also K.Pudur, Madurai. It has not been explained on the side of the claimant how the vehicle owned by a person in K.Pudur, Madurai met with an accident at Aruppukottai on 16.02.2005. Therefore, it is clear that the vehicle belonging to the 1st respondent has been set up by the claimant in view of the fact that they were not able to identify the vehicle which had caused the accident resulting in grievous injuries. When the involvement of the 1st respondent vehicle has not been proved, the question of mulcting the liability upon the insurance company would not arise.

11. In view of the above said deliberations, the appeal filed by the insurance company is allowed. The 50% of the award amount has already been withdrawn by the claimants. However, any award amount that has already withdrawn by the claimants shall not be recovered. The balance amount deposited by the insurance company shall be refunded to the



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insurance company along with accrued interest.

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12. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs.

23.06.2023

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

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To

- 1.The Additional District Judge/
Fast Tract Court No.2/MACT,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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