



C.M.A.(MD)No.1520 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 22.02.2023

Delivered On : 28.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1520 of 2013

The Branch Manager,
National Insurance Company Limited,
Near Head Post Office,
Nagercoil.

.. Appellant

Vs.

1.Suraj Immanuel
2.A.Suresh Kumar
3.M.Sreekumar
4.P.Glory Bai
5.C.Kumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree passed in M.C.O.P.No.166 of 2007 dated 06.10.2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithurai.

For Appellant	: Mr.D.Sivaraman
For 1 st Respondent	: Mr.F.Deepak
For Respondents 2 and 4	: Mr.M.R.Sreenivasan
For Respondents 3 and 5	: No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.166 of 2007 dated 06.10.2012, on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithurai

2.The appellant herein is the third respondent, the first respondent herein is the petitioner and the respondents 2 to 5 herein are the respondents 1, 2, 4 and 5 in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.166 of 2007, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 01.01.2006. The Tribunal has awarded a sum of Rs.1,34,798/- (Rupees One Lakh Thirty Four Thousand Seven Hundred and Ninety Eight only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.166 of 2007 is as follows:

On 01.01.2006, when the petitioner was travelling in an auto bearing registration No.TN-74-X-5232 near Tubakodu Fish market, the driver of the auto drove the vehicle in a rash and negligent manner and dashed against a mini bus



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bearing registration No.TN-74-0815. The petitioner sustained injuries. He was admitted in Ramakrishna Hospital as 'in patient'. He sustained fractures in both the bones of the left fore arm. After taking treatment as inpatient, he took treatment as outpatient for six months. The petitioner was running a canteen and he was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month. Due to the accident, he suffered loss of income. He suffered permanent disability and he claimed a sum of Rs.3,00,000/- (Rupees Three Lakhs only) as compensation.

4.Brief substance of the counter filed by the first respondent therein is as follows:

The vehicle does not belong to the first respondent. The first respondent was not aware of the accident. The first respondent was not the driver of the vehicle. A false case was foisted against the first respondent.

5.Brief substance of the counter filed by the third respondent therein is as follows:

No accident has happened on 01.01.2006. FIR was registered against the driver of the Bajaj Auto bearing registration No.TN-74-Z-5232. But there is no such auto. The then Regional Divisional Officer, Marthandam has stated that the said number belonged to a Maruti car. Only with a bad motive, the auto was mentioned as



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the offending vehicle. It is wrong to state that such auto was insured with the third respondent. Since the vehicle was not involved in the accident, there is no necessity for the third respondent to give any compensation. TN-74-X-5232 belong to one Sureshkumar. There is no damage to the vehicle. The policy was not applicable to TN-74-Z-5232 vehicle. There was no damage in the mini bus. In the investigation report, it was stated that TN-74-Y-3026 vehicle belong to Arul Das, which was involved in the accident. There was no insurance policy for that vehicle. The same owner has another auto bearing registration No.TN-74-X-5232. Hence, this vehicle was impleaded in this case.

6.Brief substance of the counter filed by the fourth respondent adopted by the fifth respondent, is as follows:

The claim is excessive. Claiming a sum of Rs.90,000/- (Rupees Ninety Thousand only) for temporary loss of income from the period of 01.01.2006 till 30.06.2006 is excessive. The hospital was at a distance of 11 km and claiming a sum of Rs.1,600/- (Rupees One Thousand and Six Hundred only) towards transport expenses is excessive. The claim under various heads are all excessive. It was the auto, in which the petitioner travelled has dashed against the mini bus. Hence, the driver and the insurance company of the first respondent are liable to pay compensation. The fourth respondent is an unnecessary party. The petition is to be



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7. On the side of the claimant, 2 witnesses were examined and 10 documents were marked. On the side of the respondents therein, 2 witnesses were examined and 2 documents were marked. After trial, the Tribunal has awarded a sum of Rs.1,34,798/- (Rupees One Lakh Thirty Four Thousand Seven Hundred and Ninety Eight only) as compensation to be paid by the third respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The claim is a fraudulent one. The Tribunal has failed to note down the discrepancies in the registration number of the vehicle in the criminal court records and in the evidence of P.W.1. The Tribunal failed to note that the vehicle bearing registration No.TN-74-Z-5232 was a maruti car and not an auto. The Tribunal failed to note that there was four days delay in lodging the FIR and that the delay was not properly explained and that the FIR and the claim petition reflect the same registration number. Only during the time of trial, the claimant has deposed that the registration number of the auto was TN-74-Z-5232.

8. The first respondent has filed the counter stating that the vehicle was not involved in any accident. The claimant has sustained injuries somewhere else and he



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has wrongly mentioned the auto as the offending vehicle. The claimant has not even deposed that registration number was wrongly mentioned in the claim petition and in the criminal court records.

9.The Tribunal is wrong in awarding Rs.26,000/- (Rupees Twenty Six Thousand only) towards future medical expenses. The Tribunal has awarded Rs. 25,000/- (Rupees Twenty Five Thousand only) towards pain and suffering, Rs. 30,000/- (Rupees Thirty Thousand only) towards temporary loss of income, Rs. 10,000/- (Rupees Ten Thousand only) towards medical expenses, which are all excessive.

10.On the side of the appellant, it is stated that the involvement of the vehicle was not proved by the claimant. FIR was lodged after three days from the date of accident and that the vehicle mentioned in the FIR is only TN-74-Z-5232. Even in the chargesheet, the same number was mentioned and that the official from the RTO office, has deposed that the said number belong to a Maruti car. Even in the claim petition and in the proof affidavit filed by the claimant, the number was mentioned only as TN-74-Z-5232 and that no explanation was given by the claimant for the discrepancy in the number and that no document or evidence was adduced on the side of the claimant regarding the number and that under Section 166 of Motor



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Vehicles Act, the burden is on the claimants.

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11.The learned counsel for the appellant would rely upon a judgment of the Hon'ble Supreme Court in the case of **Reshma Kumari and Others v. Madan Mohan and Another** reported in **(2013) 9 Supreme Court Cases 65**, which reads as follows;-

“On the other hand, by making an application for compensation arising out of an accident under Section 166 it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation.”

12.The learned counsel for the appellant would rely upon a judgment of this Court in the case of **New India Assurance Co. Ltd., v. K.Rameshkumar and Another** reported in **2011 (2) TN MAC 78 (DB)**, which reads as follows;-

“Considering all the discrepancies mentioned above, a strong suspicion is raised with regard to the very accident itself. However, the first respondent/claimant has failed to dispel the doubt and suspicion by adducing any acceptable evidence. The Tribunal, without taking into consideration the aforesaid aspect has found that the second respondent was negligent and awarded a sum of Rs. 15,10,000/- to the 1st respondent/claimant as compensation. When



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the first respondent/claimant failed to prove that the accident had occurred on 01.05.2002 and that the second respondent was negligent in driving the motorcycle, by examining independent witnesses the Tribunal ought not have awarded the compensation. Therefore, we are of the considered view that the award passed by the Motor accident Claims Tribunal is liable to be set aside.”

13.The learned counsel for the appellant would rely upon a judgment of this Court in the case of ***the Branch Manager v. Krishnan and others*** in ***C.M.A.No. 1857 of 2002***, which reads as follows;-

“In this case also, as already stated, the claimant filed the petition under Section 166 of the MVI Act. As stated earlier, it is the duty of the claimant to prove the case. The burden of the claimants to establish the negligence of the driver or owner of the vehicle concerned and also confession made by the driver before the criminal Court is also not binding the Tribunal as, the Tribunal has to independently deal with. Considering the above facts and circumstances of the case, we are of the view that the Tribunal is failed to appreciate the oral and documentary evidence in this case and wrongly fixed the liability and the same is not sustainable either under law or on facts. This point is answered accordingly.”

14.On the side of the respondents, it is stated that the insurance company cannot escape the liability only due to a typographical error in the number of the

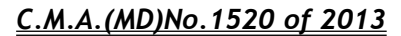


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vehicle. In the FIR, the vehicle number was wrongly printed. On the basis of the FIR, the number was wrongly printed in other papers. In the claim petition and in the FIR, the number of the vehicle was mentioned as TN-74-Z-5232.

15.The contention of the appellant is that some other vehicle was involved in the accident. Since that vehicle was not having valid driving licence, a new vehicle was introduced. R.W.1 has deposed that the accident has happened due to some other vehicle and that he has filed a report to that effect. The report was marked as Ex.R2 on the side of the third respondent. No other document was filed on the side of the respondents to prove that some other vehicle was involved in the accident. There was no independent evidence on the side of the third respondent. Hence, it is decided that the contention of the appellant is not sustainable.

16.On the side of the appellant, it is stated that there is a delay of 3 days in filing the FIR and the delay was not properly explained by the complainant. On the side of the respondents, it is stated that there was delay. Since the claimant sustained injury and he was admitted in the hospital and he could not file a complaint in time and that the driver of the auto has admitted his guilt and the judgment copy was marked as Ex.P7. The procedures to be followed in the Motor Vehicles Claims Care is summary trial procedure and that there is no necessity to prove anything beyond



and it is decided that this contention raised by the appellant is not sustainable.

Ex.R1 on the side of third respondent.

X-5232.

Tribunal has awarded a sum of Rs.39,198/- (Rupees Thirty Nine Thousand One



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Hundred and Ninety Eight only) towards medical expenses. The claimant has sustained injuries and the wound certificate was marked as Ex.P6. Considering Ex.P6 and Ex.P9, it is decided that the amount awarded towards medical expenses is reasonable. For 13% of permanent disability, the Tribunal awarded Rs.26,000/- (Rupees Twenty Six Thousand only) as compensation, which is reasonable.

20.The Tribunal has awarded Rs.10,000/- (Rupees Ten Thousand only) towards future medical expenses, Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and suffering, Rs.3,000/- (Rupees Three Thousand only) towards extra nourishment, Rs.1,600/- (Rupees One Thousand and Six Hundred only) towards transportation charges, which are reasonable. The Tribunal has awarded a sum of Rs. 30,000/- (Rupees Thirty Thousand only) towards temporary loss of income for a period of six months, which is reasonable. In total, the compensation awarded by the Tribunal is reasonable.

21.In view of the above, it is decided that there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.166 of 2007 on the file of the Motor Accidents Claims Tribunal, (Sub Court), Kulithurai.



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22.In the result, this Civil Miscellenaous Appeal is **dismissed**. The 1st respondent herein is entitled to a sum of Rs.1,34,798/- (Rupees One Lakh Thirty Four Thousand Seven Hundred and Ninety Eight only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

23.The appellant herein is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent herein is permitted to withdraw his respective share with proportionate interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

28.04.2023

NCC : Yes/No
Index : Yes/No
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To

- 1.The Motor Accidents Claims Tribunal,
Sub Court,
Kuzhithurai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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