



C.M.A(MD)No.819 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.819 of 2009

and

M.P(MD)No.1 of 2009

The Branch Manager,
The New India Assurance Company Limited,
Rosary Church Building,
61, Town Hall Road,
Madurai-625 001.

... Appellant/2nd Respondent

Vs.

1.A.Pandi

... Respondent/Petitioner

2.R.Maran

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside or modify the order of the learned Tribunal in M.C.O.P.No.2675 of 2002, dated 06.04.2009 on the file of the Motor Accident Claims Tribunal, IV Additional Subordinate Court, Madurai.

For Appellant : Mr.J.S.Murali

For R1 : Mr.D.Nallathambi

For R2 : No Appearance



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JUDGMENT

WEB COPY The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.2675 of 2002 questioning the involvement of the insured vehicle.

2. According to the injured claimant, he was riding a bicycle on 04.08.2002 near Arapalayam Bus Stand, Madurai. At about 06.00 p.m, a lorry owned by the 1st respondent and insured with the 2nd respondent was driven in a rash and negligent manner and dashed against the rear side of the bicycle and he sustained grievous injuries. Hence, he prayed for a compensation of Rs.1,00,000/-.

3. The insurance company has filed a counter contending that F.I.R has been lodged only after 28 days from the date of the alleged accident. That apart, the accident register reveals that the accident has taken place near Fatima College. However, in the F.I.R, it has been mentioned that the accident has taken place near Arapalayam Bus Stand. In view of the discrepancy and the delay in lodging the F.I.R, serious doubt has arisen with regard to the involvement of the insured vehicle. They have also



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questioned the quantum of compensation as prayed for by the claimant.

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4. The tribunal after considering the oral and documentary evidence, has arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the 1st respondent. The tribunal has also relied upon the F.I.R, charge sheet and the judgment rendered by the Criminal Court to arrive at a finding that the driver of the lorry had pleaded guilty and paid fine. Based upon the medical records marked as Exhibit P.6 to P.14, the tribunal has proceeded to decide that the claimant had sustained 28% disability and proceeded to award a sum of Rs.60,000/-. This award is under challenge in the present appeal.

5. The learned counsel appearing for the appellant had contended that according to the claimant, the accident has taken place at 06.00 p.m on 04.08.2002. The injured claimant has been admitted to Government Rajaji Hospital at 06.45 p.m. In the accident register, it has been recorded that the accident has taken place near Fatima College, Madurai. However, no F.I.R was registered on the said date or on the next day. An F.I.R has been registered only on 02.09.2002 after a delay of 28 days. The said F.I.R has been lodged by the wife of the injured claimant



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indicating the fact that the accident has taken place near Arapalayam Bus Stand. Therefore, there is a discrepancy between the records in the accident register and the F.I.R. That apart, F.I.R has been lodged after a period of 28 days. This creates serious doubt with regard to the involvement of the insured vehicle, namely the vehicle belonging to the 1st respondent. The claimant has not established the involvement of the insured vehicle. Therefore, the tribunal was in error in mulcting the liability upon the appellant insurance company. He also questioned the quantum of award.

6. Per contra, the learned counsel appearing for the respondent/claimant had contended that after the accident, the injured claimant was in unconscious stage and he was admitted to the hospital by a third party. The records in the accident register have been made only based upon the statements made by the said third party. Therefore, the correct place of accident is only near Arapalayam Bus Stand. Just because there is some discrepancy between the accident register and F.I.R, the accident cannot be denied or doubted by the insurance company. He further contended that the injured claimant has been admitted to the Government Rajaji Hospital at about 06.45 p.m and they



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have also reported the road traffic accident to the police authorities.

However, they have taken their own time to register an F.I.R. Therefore, the claimant cannot be found fault with. Hence, he prayed for sustaining the order passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the records.

8. The primary contention of the learned counsel appearing for the appellant is that the claimant has not proved the involvement of the insured vehicle. The injured claimant has been admitted to Government Rajaji Hospital at about 6.45 p.m on 04.08.2002. In the accident register, some third party who admitted the claimant has mentioned that the accident has taken place near Fatima College. However, the insurance company has not chosen to examine the third party or taken any steps to prove the fact that the accident has taken place in a different place. On the other hand, the injured claimant has examined himself as P.W.1 and he has specifically contended that the accident has taken place only near Arapalayam Bus Stand. Based upon Exhibit P.1/F.I.R, a charge sheet has been filed under Exhibit P.2 and a judgment has been delivered under



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Exhibit P.4 by the Criminal Court. In all these records, it has been specifically mentioned that the accident has taken place only near Arapalayam Bus Stand. The driver of the offending vehicle has pleaded guilty and paid fine. Therefore, this Court does not find any reason to interfere in the finding of the tribunal with regard to the involvement of the vehicle.

9. As far as the quantum of compensation is concerned, a disability certificate has been issued to the effect that the claimant has sustained 32% disability. However, the tribunal has reduced the said disability to 28% and proceeded to award a sum of Rs.42,000/- towards partial permanent disability and after awarding various amounts under the conventional heads, totally a sum of Rs.60,000/- has been awarded for the injury sustained by the claimant. Therefore, this Court does not find that the quantum is either excessive or unreasonable under anyone of the heads. Therefore, the appeal lacks merits.

10. Hence, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



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NCC : Yes / No
Index : Yes / No
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To

- 1.The Motor Accident Claims Tribunal,
IV Additional Subordinate Court,
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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