



C.M.A.(MD)No.1735 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.02.2023

Delivered On : 31.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1735 of 2013

The Regional Manager,
Royal Sundaram Alliance Insurance
Company Ltd.,
TVS Cooperative Stores Building,
37, Krishna Rao Tanks Street,
Madurai 625 001.

.. Appellant

Vs.

1.Bala @ Siraimeettan
2.Ramakrishnan

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 26.11.2012 made in M.C.O.P.No.84 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Paramakudi.

For Appellant	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.Y.Prakash
For 2 nd Respondent	: 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.84 of 2011 dated 26.11.2012, on the file of the Motor Accident Claims Tribunal, Sub Judge, Paramakudi.

2.The appellant herein is the second respondent, the first respondent herein is the petitioner and the third respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No.84 of 2011, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 09.12.2009. The Tribunal has awarded a sum of Rs. 2,66,827/- (Rupees Two Lakhs Sixty Six Thousand Eight Hundred and Twenty Seven 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.84 of 2011 is as follows:

On 09.12.2009, when the petitioner was riding his Hero Honda vehicle along the Madurai-Kamuthi main road near S.S.Pandiyan Company, a JCB bearing registration No.TN-64-H-0243 driven by its driver came in a rash and negligent manner and dashed against the petitioner. The petitioner was admitted in Kamuthi Government Hospital and then he was admitted in Madurai Meenakshi Mission



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Hospital. The petitioner has claimed a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) as compensation.

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

The petitioner has to prove that it was the driver of the first respondent vehicle, who was responsible for the accident. The petitioner has to prove the involvement of the vehicle and that the petitioner has to prove that the driver of the first respondent was having valid driving licence. At the time of accident, Madurai – Kamuthi road was under repair and another road was in bad shape. Caution notice was also placed. Even then the petitioner came in a rash and negligent manner and he invited the accident. The vehicle bearing registration No.TN-67-H-0243 did not involve in the accident. The age, profession and income of the petitioner are all denied.

5.On the side of the claimant, 3 witnesses were examined and 11 documents were marked. On the side of the respondents therein, two witnesses were examined and 2 documents were marked. After trial, the Tribunal has awarded a sum of Rs.2,66,827/- (Rupees Two Lakhs Sixty Six Thousand Eight Hundred and Twenty Seven only) as compensation to be paid by the second respondent therein. Against



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which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The Tribunal has failed to consider that the vehicle was not involved in the accident and that there is 22 days delay in lodging the FIR wherein the injured vehicle was mentioned as unidentified. As per the version of the complaint in the FIR, the owner of the vehicle involved in the accident was one Seyyathurai Thevar whereas the actual owner of the vehicle is SR & Co. The Tribunal is wrong in deciding that the insured vehicle was the vehicle involved in the accident. The Tribunal failed to appreciate Ex.R1, regarding the cause of accident. The Tribunal cannot expand the initials of the letters 'SR & Co' as mentioned in the paragraph no.8 of the judgment. The Tribunal ought to have dismissed the claim petition against the owner of the vehicle and the insurance company. The Tribunal failed to appreciate the evidence of R.W.1 and Ex.R1 and Ex.R2.

6.On the side of the appellant, it is stated that the vehicle was not involved in the accident and that the name of the owner was different and the Tribunal discussed the ownership in the claim petition. There was no policy coverage for the vehicle.



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7.On the side of the appellant, it is stated that the accident was not due to rash and negligent driving of JCB driver. The JCB vehicle bearing registration No.TN-67-H-0242 never involved in any accident. It is admitted by both sides that the road work was going on along the Madurai – Kamuthi road. The case of the appellant is that it was the first respondent, who was rash and negligent. In Ex.R1, it is mentioned that the first respondent sustained injuries, when he fell down from the two wheeler. In Ex.R1, the first respondent did not mention anything regarding the accident. P.W.2 was examined and he has deposed that the first respondent sustained injury in the road accident. AR copy was marked as Ex.P4. The copy of the FIR was marked as Ex.P1. Observation Mahazer was marked as Ex.P2. The copy of the rough sketch was marked as Ex.P3. The copy of the chargesheet was marked as Ex.P5.

8.From the evidence of P.W.1 and P.W.2 and from the documents Ex.P1, Ex.P2, Ex.P3, Ex.P5, it is decided that the accident had happened only due to rash and negligent driving of the JCB driver. The vehicle was insured with the appellant and the insurance certificate was marked as Ex.R2.

9.On the side of the first respondent, it is stated that P.W.3 has assessed the disability as 33%. AR copy was marked as Ex.P4. Wound certificate was marked as Ex.P6. The copy of discharge summary was marked as Ex.P7. The disability



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certificate was marked as Ex.P14. X ray was marked as Ex.P15. P.W.3 has deposed that the first respondent has sustained 33% disability. R.W.1 the Doctor has deposed that he gave treatment to the claimant and that the first respondent sustained injuries in the accident and the fact was mentioned in his statement given to the Police. R.W. 1 has deposed that the first respondent fell down from his vehicle and he sustained injuries and that the injuries were not due to motor vehicle accident. Considering the evidence of P.W.1, P.W.2 and Ex.R2 and considering Ex.P4, Ex.P6, Ex.P7, it is decided that the first respondent sustained injuries in the accident.

10.On the side of the appellant, it is stated that the second respondent's vehicle was not involved in the accident and that there was no policy coverage.

11.On the side of the appellant, it is stated that the second respondent is not the owner of the vehicle and that the owner of the vehicle is SR & Co. The second respondent is having no connection with the JCB vehicle. SR & Co is an institution that belong to one Cheyathurai Thevar and his son, the second respondent. In Ex.P1 Mr.Cheyathurai Thevar was mentioned as the owner. The initials S.R. & Co., was mentioned as the owner and that there was policy.



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12.It is seen that the vehicle was in the name of SR & Co in the records and the policy was taken in the name of the second respondent, who is one of the owners of SR & Co., institution. The claim petitions are to be tried only as summary trial procedures and there is no necessity to explain each and every point in a detailed manner and hence, it is decided that the vehicle involved in the accident is JCB bearing registration No.TN-67-H-0243 and that the vehicle was insured with the appellant and that the appellant is liable to pay the compensation.

13.The medical bills were marked as Ex.P8. The prescriptions were marked as Ex.P9. P.W.3 has assessed the disability as 33%. The Tribunal has awarded Rs.33,000/- (Rupees Thirty Three Thousand only) for 33% of disability. The Tribunal has awarded Rs.20,000/- (Rupees Twenty Thousand only) towards pain and suffering, a sum of Rs.5,000/- (Rupees Five Thousand only) towards transportation charges, a sum of Rs.7,000/- (Rupees Seven Thousand only) towards attendant charges, a sum of Rs.95,852/- (Rupees Ninety Five Thousand Eight Hundred and Fifty Two only) towards medical bills and a sum of Rs.8,000/- (Rupees Eight Thousand only) towards extra nourishment, which are reasonable.

14.In view of the above, there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.84 of 2011 on the file of the Motor Accidents



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15.In the result, this Civil Miscellenaous Appeal is **dismissed**. The 1st respondent herein is entitled to a sum of Rs.2,66,827/- (Rupees Two Lakhs Sixty Six Thousand Eight Hundred and Twenty Seven only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

16.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 the award amount with proportionate interest and cost, 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.

31.03.2023

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



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To

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



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R. THARANI, J.

MRN

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