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C.M.A.(MD).No.479 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.479 of 2023

and

C.M.P.(MD).No.5979 of 2023

The Oriental Insurance Company Limited
through its Branch Manager Office at
Door No.576, M.C.Complex,
Tenkasi Road,
Alangulam.

... Appellant

Vs.

1.Sakthivel
2.Thiruppathiram

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment dated 18.10.2022 made in M.C.O.P.No.87 of 2018 by the Motor Accident Claims Tribunal cum Special Subordinate Judge, Tirunelveli.

For Appellant : Mr.E.Chandrasekaran

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal cum Special Subordinate Judge, Tirunelveli in M.C.O.P.No.87 of 2018, dated 18.10.2022, mainly on the ground of negligence, the appeal has been filed by the Insurance Company.



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2. The brief facts leading to the filing of this appeal are as follows:

On 13.10.2016, while the petitioner was riding in a Passion Pro motorcycle bearing Registration No.TN 72 BD 1855 belonging to his father on Tiruneveli – Tenkasi Main Road, on the western side of 20 Micron Company in a slow speed, a Mahindra Zylo car bearing Registration No.TN 31 AC 3535 belonging to the first respondent was driven by its driver in a high speed and hit against the motorcycle. As a result, the petitioner has sustained injuries and admitted in Rhock Hospital as in-patient from 14.10.2016 and 17.11.2016. Hence, he has filed the claim petition before the Motor Accident Claims Tribunal, seeking compensation of Rs.15,00,000/-. The Insurance Company has filed a counter stating that only the petitioner came in a rash and negligent manner, without wearing helmet and dashed against the car and sustained injuries and the F.I.R. was also registered against the rider of the motorcycle. Hence, disputed the claim.

3. Before the Tribunal, on the side of the petitioner, P.Ws.1 to 3 were examined and Exs.P1 to P11 were marked and on the side of the respondents, R.W.1 was examined and Exs.R1 to R5 were marked and Exs.X1 to X3 were marked.



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4. Considering the evidence, the Tribunal has come to the conclusion that only the driver of the car drove the car in a rash and negligent manner and dashed against the motorcycle and awarded a sum of Rs.9,46,755/-, in the following manner:

S. No	Description	Amount awarded by the Tribunal
1.	Disability Rs.4,000/- x 57%	Rs.2,28,000/-
2.	Loss of convenience	Rs.1,00,000/-
3.	Transport Expenses	Rs.5,000/-
4.	Attendant Charges	Rs.10,000/-
5.	Pain and Suffering	Rs.1,00,000/-
6.	Extra Nourishment	Rs.10,000/-
7.	Loss of income (Rs. 6,000/- x 6 months)	Rs.36,000/-
8.	Medical Expenses	Rs.4,57,755/-
	Total	Rs.9,46,755/-

5. The learned counsel appearing for the appellant would submit that the evidence of P.W.1 has clearly indicate that the rider of the motorcycle drove the vehicle in a rash and negligent manner and dashed against the car coming in the opposite direction. The evidence of P.W.2 also substantiated the same. Similarly, R.W.1, the Investigating Officer also substantiated the same.



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However, without considering the same, the Tribunal has fixed the negligence on the part of the driver of the car.

6. I have perused the entire materials.

7. Now, the point for consideration in this appeal is whether the Tribunal is right in fixing the negligence on the part of the driver of the car.

8. On perusal of the entire evidence, particularly the evidence of P.W.1, who is the rider and P.W.2, who is the driver of the car, makes it clear that only the driver of the car hit the motorcycle. Though P.W.2 admitted that he has given a complaint originally against the rider of the motorcycle, but his evidence clearly stated that only in order to avoid the cow on the road, he swerved the car, which resulted in accident. Therefore, the driver of the car himself admitted that while avoiding the collision with the cattle, he swerved the car and hit against the motorcycle. This fact clearly indicate that the driver of the car was driving the car in a rash and negligent manner, that too there was a heavy rain. If the driver of the car drove the car in a slow manner during the rainy season, he would not have swerved the car in a wrong direction.



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9. In such a view of the matter, this Court is of the view that merely P.W. 2, who is the driver of the offending vehicle, has given a complaint against the rider of the motorcycle at the first instance, it cannot be presumed that there was a negligence on the part of the rider of the motorcycle, R.W.1. The Investigating Officer has simply stated that he proceeded investigation on the basis of the F.I.R. Merely on the basis of the final report filed based on the F.I.R., it cannot be said that there was no negligence on the part of the driver of the car. Therefore, I do not find any merit in this appeal and as the other aspects have not been challenged, the award passed by the Motor Accident Claims Tribunal cum Special Subordinate Judge, Tirunelveli in M.C.O.P.No.87 of 2018, dated 18.10.2022 is confirmed.

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

05.06.2023

akv

To

The Motor Accident Claims Tribunal cum
Special Subordinate Judge,
Tirunelveli.



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N.SATHISH KUMAR,J.

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