



C.M.A(MD)No.418 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.418 of 2020

1.The Director of Rural Development and
Panchayat Raj,
Panagalmaligai,
Saidapet, Chennai.

2.The District Collector,
Tirunelveli District,
Now Tenkasi District.

... Appellants/Respondents 2&3

Vs.

1.Kumar

... Respondent/Claimant

2.Narendrapandian

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the fair and decretal order, dated 25.02.2020 made in M.C.O.P.No.38 of 2016 on the file of Motor Accident Claims Tribunal (Sub Court), Tenkasi and allow the Civil Miscellaneous Appeal.

For Appellants : Mr.N.G.A.Natraj
Government Advocate

For R1 : Mr.R.J.Karthick



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For R2 : No Appearance

JUDGEMENT

The present appeal has been filed by the respondents in the claim petition challenging an award passed by the Motor Accident Claims Tribunal, Tenkasi in M.C.O.P.No.38 of 2016.

2. The injured claimant was travelling in a TVS motor cycle from Thirumangalam to Kollam National Highways road. While he was crossing Puliyarai, a Government vehicle bearing Registration No.TN 09 G 2532 driven by the 1st respondent coming from the opposite direction, had hit against the claimant's motor cycle and he was thrown away. According to the claimant, he sustained grievous injuries. The claimant has further contended that he is a lorry driver and he was earning a sum of Rs.15,000/- per month. He had further contended that he was admitted as an in-patient and in the Intensive Care Unit in Tirunelveli Medical College Hospital between 04.08.2015 to 02.09.2015. The claimant had claimed a sum of Rs.20,00,000/- towards compensation.



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3. The 3rd respondent had filed a counter contending that the vehicle said to have been involved in the accident is not an Omni Bus, but it is a Tata Sumo car. They have further contended that the claimant had attempted to overtake an Omni Bus and in the said process, he lost his control and dashed against the right side portion of the Tata Sumo car and that has resulted in the accident. Therefore, the entire accident has taken place only due to the rash and negligent driving of the injured claimant and the respondents are no way responsible for the said accident. The respondents have further disputed the quantum of compensation prayed for by the claimant.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that the vehicle belonging to the 1st respondent, namely the Tata Sumo car is responsible for the said accident and only due to the rash and negligent driving of the 1st respondent, the said accident has taken place. The tribunal after considering the fact that the claimant has sustained 60% disability and considering his future prospects, had arrived at a finding that he is entitled to a sum of Rs. 12,72,960/- towards permanent disability and after adding the compensation under the conventional heads, arrived at a compensation of Rs.14,04,960/-. This award is under challenge in the present appeal.



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5. According to the learned counsel appearing for the appellants, in the claim petition, the vehicle that has been described to be an offending vehicle is an Omni Bus. However, the vehicle said to have been involved in the accident is Tata Sumo car. Therefore, the description of the vehicle itself is erroneous and this creates doubts about the involvement of the Tata Sumo vehicle.

6. The learned counsel for the appellants had further contended that an F.I.R was not lodged by the injured claimant, but by a third party. If really the accident has happened at about 04.00 p.m., on 04.08.2015, the injured claimant would have certainly lodged a complaint before the police. Therefore, according to the learned counsel appearing for the appellants, the delay in registration of the F.I.R would certainly create a doubt with regard to the involvement of the vehicle, especially in view of the wrong description in the claim petition. Therefore, he prayed for allowing the appeal.

7. Per contra, the learned counsel appearing for the respondent had contended that in the claim petition, the vehicle number has been correctly mentioned. The accident has taken place at about 04.00 p.m. on 04.08.2015 and the claimant was immediately taken to the hospital.



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Therefore, an F.I.R was registered within a few hours (06.30 p.m.,) on the same day. The vehicle number has been correctly mentioned in the F.I.R as against the 1st respondent herein and the police authorities have also filed a charge sheet as against the 1st respondent and the criminal case is still pending. Therefore, there cannot be any doubt with regard to the involvement of the vehicle.

8. He further contended that the injured claimant being a lorry driver, he has sustained serious injuries and therefore, the tribunal was right in awarding a sum of Rs.14,04,960/- considering the future prospects. Hence, he prayed for sustaining the award passed by the tribunal.

9. I have carefully considered the submissions made on either side.

10. The learned counsel appearing for the appellants had primarily contended that the description of the vehicle in the claim petition is not in consonance with the F.I.R or the charge sheet. A perusal of the claim petition clearly shows that they have mentioned the correct number of the vehicle and also mentioned it is a Government vehicle. The only mistake that has been committed by the claimant is that instead of mentioning it



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as a Tata sumo car, they have mentioned it as an Omni bus. The vehicle number is also mentioned in the F.I.R as well as in the charge sheet filed against the 1st respondent driver of the offending vehicle. Therefore, the said ground raised by the learned counsel appearing for the appellants is not legally sustainable.

11. The accident has taken place at about 04.00 p.m., on 04.08.2015 on the Thirumangalam to Kollam National Highways. It is an admitted fact that the claimant was immediately taken to the Tirunelveli Medical College Hospital and he was an in-patient till 02.09.2015. Therefore, the contention of the learned counsel for the appellants that the injured claimant has not lodged the F.I.R is not legally sustainable. A third party has lodged an F.I.R at about 06.00 p.m., on the same date. Therefore, the delay in registration of the F.I.R cannot be found fault with.

12. The claimant has produced Exhibit P.7 driving license to establish that he is holding license to drive heavy vehicles and he is a lorry driver. As per Exhibit P.10, the injured claimant has sustained 60% permanent disability. The tribunal has taken into consideration the monthly income of the driver at Rs.8,000/- and has added 30% towards



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future prospects and thereafter, arrived at a monthly income at Rs. 10,400/-. Applying the multiplier as 17, the tribunal has arrived at a total compensation towards permanent disability at Rs.12,72,960/-. This Court does not find any illegality or infirmity in the said award amount arrived at by the tribunal. The tribunal has further awarded a sum of Rs.52,000/- towards loss of income for 5 month period and Rs.30,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities and Rs.15,000/- towards transport expenses and Rs.10,000/- towards extra nourishment. This Court does finds that the award under the conventional heads are neither exorbitant nor unreasonable. Therefore, viewed from any angle, the appeal lacks merits.

13. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs.

28.03.2023

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

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To

- 1.The Motor Accident Claims Tribunal (Sub Court),
Tenkasi.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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