



C.M.A.(MD)No.540 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 22.02.2023

Delivered On : 03.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.540 of 2019

The Branch Manager,
The New India Assurance Co. Ltd.,
D.No.1449/402, Tenkasi Road,
Rajapalayam – 626 117,
Virudhunagar District.

.. Appellant

Vs.

1.T.Bamini
2.G.Rajendran
3.The Branch Manager,
United India Insurance Company Limited,
Micro Office, Nattanmai Complex,
D.No.213/18, Odakkarai Street,
Cumbum, Theni District.

.. 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.171 of 2018 dated 12.03.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For Appellant	: Mr.J.S.Murali
For 1 st Respondent	: Mr.S.Srinivasa Raghavan
For 2 nd Respondent	: Mr.M.Thirunavukkarasu
For 3 rd Respondent	: Mr.C.Jawahar Ravindran



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.171 of 2018 dated 12.03.2019, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

2.The appellant herein is the first respondent, the first respondent herein is the petitioner and the respondents 2 and 3 herein are the respondents 2 and 3 in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No. 171 of 2018, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 12.09.2014. The Tribunal has awarded a sum of Rs. 5,88,800/- (Rupees Five Lakhs Eighty Eight Thousand and Eight Hundred 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.171 of 2018 is as follows:

On 12.09.2014, at about 05.15 a.m., when the petitioner was travelling in a Maruthi Car bearing registration No.TN-67-M-4563 keeping the left side of the road near Nathampatti police station, a tractor bearing registration No.TN-60-V-0272 was



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parked without any indicator or any signal and thereby, the petitioner vehicle dashed against the tractor from behind. The petitioner sustained injuries and he claimed a sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) as compensation.

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

The petitioner has to prove that the vehicle was insured with the first respondent and the driver was having valid driving licence. It was the car driver who was responsible for the accident and he dashed against the back side of the tractor. The respondent was not liable to pay the compensation.

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

The manner of the accident as narrated in the petition is wrong. The tractor was parked due to some repair. But it was the driver of the car who drove the vehicle in a rash and negligent manner without observing the proceeding vehicles and dashed against the thar heater machine, which was attached to the tractor. The car driver was responsible for the accident. Even in the FIR, it was mentioned that it was the car driver, who was rash and negligent. The driver of the tractor was discharged



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of the charges in the report filed by the Police. The owner of the heater machine and the owner of the Thar plant were necessary parties to the case. The petitioner has to prove the injuries, nature of treatment and medical expenses. The owner of the car and the insurance company of the car are liable to pay compensation.

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

The manner of the accident and the injuries sustained by the petitioner, mode of treatment, medical expenses and disability are all denied. It was the car driver who was rash and negligent without observing the road rules dashed against the heater machine, which was attached to the tractor and he invited the accident. The policy was given to the tractor only for using the tractor for agricultural purpose. But the tractor was used for construction work, which was against the policy conditions. There was no policy for the heater machine. Since the vehicle was used for commercial purpose, the second respondent was imposed fine and hence, this respondent is not liable to pay compensation. The injuries are simple in nature and the claim is excessive.

7. Three claim petitions were filed claiming compensation arising out of the very same accident. All the cases in M.C.O.P.Nos.171 of 2018, 172 of 2018 and 173



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of 2018 were taken up for joint trial and a common judgment was pronounced by the Tribunal. In the common trial, on the side of the claimant, 3 witnesses were examined and 32 documents were marked. On the side of the respondents therein, 4 witnesses were examined and 10 documents were marked and one document was marked as Court document. After trial, the Tribunal has awarded a sum of Rs. 5,88,800/- (Rupees Five Lakhs Eighty Eight Thousand and Eight Hundred only) as compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The Tribunal failed to consider that the owner of the vehicle is not a third party and he cannot claim compensation from his own insurance company. The Tribunal is wrong in awarding Rs.3,500/- (Rupees Three Thousand and Five Hundred only) for each percentage of the disability. The award under various heads is excessive.

8.On the side of the appellant, it is stated that the claimant is the owner cum driver of the vehicle and he is not the third party. Even in the claim petition, the owner was not mentioned as a respondent. When the owner himself is not liable, the insurance company is also not liable to pay compensation.

9.On the side of the respondents, it is stated that the connected matter in



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C.M.P.(MD)No.9883 of 2021 in C.M.A.(MD)No.SR54683 of 2021 was dismissed by this Court on 04.01.2022.

10.On the side of the respondents, it is stated that three claim petitions were filed, which arise out of same accident and a common order was passed by the Tribunal and that the tractor was insured with the third respondent and that the first respondent is the insurance company of the car and that the owner of the tractor was the second respondent and the tractor was insured with the third respondent and that P.W.1 to P.W.3 have deposed that both the car driver and the driver of the tractor were responsible for the accident and that the insurance policy is a comprehensive policy and that the occupants are also eligible to claim compensation.

11.On the side of the respondents, it is stated that out of three claim petitions, one claim is for fatal and other one claim is for injury. The tractor was parked on the left side of the road and that it was the car, which dashed against the heater machine and that the driver was having valid driving licence and that negligence is on the driver of the car and that no appeal was filed against the award in the other two connected cases and that the appellant has accepted the liability in two other cases and that in the FIR, it was mentioned that it was the car that was driven in a rash and negligent manner and that the Tribunal is wrong in fixing the



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entire liability on the tractor. The insurance company of the parked vehicle is not liable to pay the compensation.

12.The learned counsel for the respondents would rely upon a judgment of this Court in the case of Superintendent of Police v. P.Saravanan reported in 2022 (2) TNMAC 385, which reads as follows:

“In the counter statement, the appellant-Superintendent of Police has taken a stand that the injured was coming from the Junction road without noticing the on-coming vehicle on the four way main road has spoked his front wheel in the main road and thereby the accident has taken place. R.W.1 the driver of the vehicle in the cross-examination had admitted that five feet before the place of accident, he had noticed the position of the Motorcycle. The scene of the crime is four way road and junction of Kudhiraaisari Kulam and hence, the driver had the opportunity to avoid the accident. Even as per the evidence of R.W.1, the two wheeler is waiting there to cross the road and hence, the contention of the appellant Police Department is hereby rejected in view of the specific admission made by the R.W.1 in the cross examination as extracted supra coupled with the fact that he had a last opportunity to avoid the accident. From the admission of R.W.1 in his evidence regarding the specific evidence of P.W.1 that his motorcycle was stationed, I find that the negligence fixed on the part of the driver of the appellant is just and reasonable. Hence, the same does not warrant any interference.”



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13.The learned counsel for the respondents would rely upon a judgment of this Court in the case of The Bajaj Allianz General Insurance CO. Ltd., v. Lakshmi and others reported in 2021 Supreme(MAD) 205, which reads as follows:

“However, having proved the fundamental breach of policy condition and violation of statutory provisions, the principle of pay any recovery has to be applied as per the dictum of the Hon'ble Supreme Court since the claimants are the third parties. Therefore, the appeal is partly allowed giving liberty to the appellant to recover from the insured after satisfying the award by paying to the claimants.”

14.On the side of the appellant, it is stated that the owner of the tractor did not file any appeal and he cannot question the liability in this appeal. The policy was a package policy and that the connected matter in C.M.P.(MD)No.9883 of 2021 in C.M.A.(MD)No.SR54683 of 2021 were dismissed by this Court on 04.01.2022 but the orders were not on merits.

15.On the side of the second respondent, it is stated that the tractor was parked due to repair along the left side of the road and that it cannot be presumed that it was used for non agricultural purpose and that at the time of accident, the



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tractor was insured with the third respondent and that it was the driver of the car who dashed against the parked trailer and the tractor and that the same was admitted by P.W.1 in the cross examination. P.W.2 is the husband of the claimant and he has also admitted that the car driver has dashed against a parked vehicle.

16.In the FIR, Ex.P1, it was mentioned that the car driver alone was negligent and that he invited the accident. It is seen that the tractor was parked due to repair at the time of accident. At the time of accident, a car came from behind and hit the tractor. The case of the claimant is that there was no indicator or reflector and hence, the car dashed against the back side of the parked vehicle. On the side of the owner of the tractor, it is stated that it was the car driver, who was rash and negligent and he dashed against the parked vehicle.

17.A copy of the FIR was marked as Ex.P1. A copy of the rough sketch was marked as Ex.P2, Observation Mahazer and MV report were marked as Ex.P3 to Ex.P5. The FIR was registered against both the drivers. In the chargesheet, the name of the tractor driver was removed. In Ex.R1, it was mentioned that the name of the tractor driver was removed from the chargesheet. Ex.R1 was not marked through the concerned Police Officials whether the name of the tractor driver was included by the Court was not elicited. Hence, the Tribunal has fixed the responsibility on both



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the drivers that is 50% of the contributory negligence on the tractor and 50% negligence on the driver of the car, which is reasonable.

18.The contention of the appellant is that the claimant in M.C.O.P.No.171 of 2018 is the owner of the car and the owner cannot claim compensation from his own insurance company. On the side of the claimant, it is stated that the policy is a comprehensive policy and that the claimants are entitled to get compensation and that the third respondent have raised objections regarding the liability. There is no appeal or cross objection on the side of the respondents 2 and 3 and hence, this contention cannot be taken into consideration. In Ex.R10, copy of the policy, it was mentioned that a sum of Rs.100/- was paid for Compulsory Personal Accident Premium. R.W.4, Official from insurance company was examined and he has admitted that Rs.100/- was paid towards Compulsory Personal Accident Premium and he has also admitted that the policy was a package policy. The policy copy was marked as Ex.P9. Since the policy was a package policy and premium was collected from personal coverage, the insurance company cannot avoid the liability. Hence, it is decided that the appellant is liable to pay compensation to the claimant.

19.On the side of the appellant, it is stated that the award is excessive and the Tribunal has awarded Rs.3,500/- (Rupees Three Thousand and Five Hundred



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only) for each percentage of disability, which is excessive. Considering the date of accident, it is decided that the award fixed by the Tribunal towards disability is reasonable. The claimant sustained injuries in the accident. The claimant was referred to Medical Board and the Medical Board has fixed the disability as 61%. The disability certificate was marked as Ex.R1. It is seen that the claimant suffered fracture on the right thigh and due to the fracture, the right side hip and right knee and joint were affected. Considering the date of accident and considering the nature of injuries, it is decided that the compensation awarded by the Tribunal towards disability is reasonable.

20.The Tribunal has awarded Rs.5,000/- (Rupees Five Thousand only) towards transportation and Rs.10,000/- (Rupees Ten Thousand only) towards extra nourishment, Rs.10,000/- (Rupees Ten Thousand only) towards attendant charges, Rs.30,000/- (Rupees Thirty Thousand only) towards pain and suffering, Rs.2,000/- (Rupees Two Thousand only) towards loss of articles, which are reasonable. The Tribunal has awarded Rs.1,56,861/- (Rupees One Lakh Fifty Six Thousand Eight Hundred and Sixty One only) towards medical expenses. Considering Ex.P9, it is decided that the amount awarded for medical expenses is reasonable.

21.The Tribunal has awarded Rs.30,000/- (Rupees Thirty Thousand only)



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towards future medical expenses, which is reasonable. The Tribunal has awarded Rs. 1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) towards damages towards vehicles and Rs.6,400/- (Rupees Six Thousand and Four Hundred only) towards survival charges, which are reasonable.

22.In view of the above discussion, it is decided that there is nothing sufficient enough to interfere in the order passed in M.C.O.P.No.171 of 2018 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur.

23.In the result, this Civil Miscellenaous Appeal is **dismissed**. The 1st respondent herein is entitled to a sum of Rs.5,88,800/- (Rupees Five Lakhs Eighty Eight Thousand and Eight Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

24.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, 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 amount with interest and cost after deducting any amount received by him earlier.



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The claimant is not entitled for interest for the default period, if there is any. No

Costs.

03.03.2023

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

To

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Virdhunagar District at Srivilliputhur.
- 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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