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C.M.A.(MD)No.824 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.08.2023

Pronounced on : 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.A.(MD)No.824 of 2022

and

C.M.P(MD)No.8461 of 2023

TATA AIG General Insurance Company Limited,
represented by its Manager,
1st Floor, May Flower Castle,
Dr.Balasundaram Road,
Coimbatore – 641 018.

...Appellant/2nd Respondent

Vs.

1.Manimaran

...1st Respondent/Petitioner

2.K.Selvam

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.250 of 2017 dated 01.07.2022 on the file of the Motor Accidents Claims Tribunal/Principal Subordinate Court, Karur and allow the appeal with costs.

For Appellant : Mr.J.S.Murali

For R1 : Mr.K.Suresh

For R2 : No Appearance



JUDGMENT

This Civil Miscellaneous Appeal is preferred against the Award dated 01.07.2022 passed in M.C.O.P.No.250 of 2017 by the Motor Accident Claims Tribunal/Principal Subordinate Court, Karur.

2. The second respondent in M.C.O.P.No.250 of 2017 is the appellant herein.

3. The first respondent is the petitioner/claimant filed the claim petition in M.C.O.P.No.250 of 2017.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 250 of 2017 is adopted hereunder.

5. The brief facts of the case:

On 07.10.2016, the petitioner was riding his two wheeler Hero Splendor bearing registration number TN 47 AH 2026 along the Salem to Karur Bye-pass NH 7 road near Sivamuruga hotel. At that time the second respondent's car Mahindra Bolaro bearing registration number TN 28 AP 9531 driven by its driver in the same manner overtook the petitioner's vehicle and suddenly applied brake. Whiles, the petitioner's vehicle hit behind the car. The petitioner sustained multiple injury and took treatment at



hospital. Hence, the petitioner filed a claim petition seeking compensation of Rs.25,00,000/-.

6. The second respondent/Insurance Company objected the claim petition by contending that the accident took place on the sole negligence of the petitioner. The FIR was registered against the petitioner. The driver of the first respondent's vehicle is not responsible for the accident. Therefore, the petitioner is not entitled any claim from the second respondent/Insurance Company. Hence, the petitioner is not to entitled to compensation.

7. Before the Tribunal both side adduced oral and documentary evidence. After hearing both and after considering the evidences, the Tribunal Court has held negligence on the both drivers of the vehicle and fixed negligence 50% + 50%. The Tribunal has considered the medical treatment taken by the petitioner and arrived a total award of Rs.7,04,431/- and awarded 50% of amount at Rs.3,52,215.50/- to the petitioner. The Tribunal further held that since the petitioner had not worn helmet at the time of accident, the Tribunal further deducted 10% of the awarded amount and thereby awarded a net amount of Rs.3,16,993.95/- to the petitioner with interest and cost. Aggrieved by the said award, the second respondent has preferred this Civil Miscellaneous Appeal.



8.Heard both side and perusal the records in this Civil Miscellaneous Appeal.

9.The learned counsel appearing for the appellant/Insurance Company has argued that the claim petition has been filed under Sections 140, 166 of the Motors Vehicles Act, if so, the entire negligence has to be attributed only on the offending vehicle. In this case, the FIR and charge sheet were filed only against the petitioner and the same was also admitted by the petitioner in his evidence. So, the petitioner is a tort-feasor. Thus Section 166 of the Motor's Vehicles Act will not apply. Therefore, as per dictum of the Apex Court held in **Reshma Kumari** case, the petitioner is not entitled to any compensation. The settled principles of law do not permit 50% + 50% negligence in this case. As per provision of 163(A) of the Act, the petitioner and the petitioner's Insurance Company alone are responsible for the claim as the negligence proved as against the petitioner. The claim petition is not maintainable against the second respondent/Insurance Company. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

10. The learned counsel for the claim petitioner/1st respondent herein, has contended that the Tribunal has made elaborate discussion over the



evidences adduced by both parties and citations relied by parties. The accident took place as the second respondent's vehicle driven by its driver in a rash and negligent manner behind the petitioner and overtook the petitioner's vehicle and applied sudden brake. Since the time was night and that too riding in NH 7 road, the petitioner hit behind the four wheeler. Therefore, the Tribunal has correctly held the negligence as 50% + 50% on both parties. The second respondent insurance company has not denied that the first respondent's vehicle over took the petitioner's vehicle and applied brake. Therefore, the compensation awarded by the Tribunal need not be interfered with. The Civil Miscellaneous Appeal may be dismissed.

11. On hearing both and on perusal of records, it is clear that the accident took place upon the negligence of both rider of the two wheeler and driver of the car. There is no contra evidence let in by the second respondent/Insurance Company that the driver of the car did not overtake the car and apply brake. It is admitted that the accident took place at night time in a national highway road. It is settled law that mere filing FIR and charge sheet against a particular driver will not sufficient to prove negligence. Each and every case has to be considered based on evidences adduced by both parties. In the case of motor accident claim cases, the sufferer has to be considered. It is the dictum of the various reported cases of the Hon'ble Supreme Court that if two vehicles involved in an accident,



the big one is to be considered for responsibility of the accident. In this case, the first respondent's car is bigger than the petitioner's vehicle. The petitioner's vehicle was hit behind the first respondent's car as the car's driver driven it in a rash and negligent manner and overtook the petitioner's vehicle and applied sudden brake. In such circumstances, the Tribunal has appreciated both side evidences bearing in mind the citations relied on by the parties and came to conclusion that both vehicle drivers held 50% negligence each. This Court is of the considered view that the negligence concluded by the Tribunal is sustainable and there is no need to interfere in it.

12. Next, the Tribunal after considering materials arrived at a total compensation of Rs.7,04,431/-. The appellant herein/second respondent Insurance Company mainly objected the medical bills while the Tribunal awarding Rs.5,75,931/-. On perusal of records, it is clear that the petitioner has taken treatment as inpatient more than 30 days. There is no dispute in it. The second respondent Insurance Company has not produced any material before the Tribunal that the medical bills produced are not genuine one or the petitioner has not incurred such amount as mentioned in the medical bills. In the absence of contra evidence on the side of the second respondent/Insurance Company regarding medical expenditure, the amount awarded under the head medical bills need not be modified.



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13. Further, the Tribunal has deducted 10% of amount from the awarded amount to the petitioner as the petitioner did not wear helmet at the time of accident. Therefore, the compensation awarded by the Tribunal is held correct and the same is not liable to be set aside.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 01.07.2022 passed by Motor Accident Claims Tribunal/Principal Sub Court, Karur in M.C.O.P.No.250 of 2017 is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

02.11.2023

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

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To

1.The Motor Accidents Claims Tribunal/
Principal Subordinate Court,
Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Pre - Delivery Judgment made in
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