BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.7 of 2021

The Superintendent of Police,
Theni District. ...Appellant/Claimant

Vs.

1.K.Vellaichamy @ Veluchamy

2.The Manager,
Oriental Insurance Company,
Mariya Joseph Building First Floor,
Government Hospital Road,
Theni. ...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment passed in M.C.O.P.No.40 of 2014 dated 21.01.2020 on the file of the Motor Accident Claims Tribunal cum Sub Court, Theni and allow the Civil Miscellaneous Appeal.

For Appellant	: Mr. D.Sasikumar Additional Government Pleader
For R2	: Mr.A.Ilango
For R1	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the order of the Motor Accident Claims Tribunal cum Sub Court, Theni in M.C.O.P.No.40 of 2014 dated 21.01.2020 dismissing the application filed for seeking damages sustained by the vehicle of the appellant herein.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

(ii) On 21.05.2008 at about 15.30 hours, when the vehicle bearing Registration No.TN-64-G-0165 was proceeding for mobile counseling, the vehicle bearing Registration No.TN-60-Y-8240 came in an opposite direction and in a rash and negligent manner dashed against the vehicle of the petitioner. A criminal case was also registered against the driver of the offending vehicle in Crime No.307 of 2008. The petitioner has spent a sum of Rs.69,260/- for repairing the vehicle of the petitioner.

(iii) The defence taken by the respondents before the tribunal is that it is for the petitioner to establish the fact that the vehicle was insured with the second respondent and also the ownership of the vehicle, since the motor vehicle inspection report indicates that the owner of the vehicle is Vellaichamy, but in the claim petition, it has been mentioned as Vellaichamy @ Veluchamy.

3. Before the Tribunal on the side of the claimants P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P4 and Ex.X1 and Ex.X2 were marked. On the side of the respondents R.W.1 to R.W.3 were examined and Ex.R1 to Ex.R6 were marked.

4.The tribunal on appreciation of entire evidence on record found that the driver of the offending vehicle was rash and negligent in driving the vehicle and dashed against the appellant's vehicle. The tribunal also found that the vehicle is insured with the second respondent. Further, on considering the Motor Vehicles Inspection Report and other documents, the Tribunal has found that the first respondent was the owner of the vehicle. Having concluded that the entire accident was due to the negligent driving of the offending vehicle's driver and that the vehicle was insured with the second respondent, the Tribunal dismissed the claim petition only on the ground that the bills produced by the appellant for the alleged repairs have not been clearly established. The tribunal has in fact come to such conclusion only on the ground that the bills have been paid in the year 2010, though the accident took place on 21.03.2008.

5.I have heard the learned counsel appearing on either side and also perused the materials available on record.

6.The learned counsel appearing for the Insurance Company does not dispute the fact that the offending vehicle is insured with the second respondent Insurance Company. On perusal of the entire award, it is seen that the tribunal has dismissed the claim petition mainly on the reason that there was no explanation on the part of the appellant why the bills were settled in the year 2010 for the damages allegedly sustained in the year 2008.

7. It is relevant to note that the tribunal has in fact failed to consider the manner in which the maintenance charges were actually disbursed by the Government. Every maintenance or repair charges to the Government vehicles will always subject to the allotment made by the higher officials. Therefore, the

mere fact that the bills have been paid in the year 2010 cannot be a ground to reject the entire claim of the appellant. The Tribunal, having found that the accident is only due to the negligent and rash driving of the offending vehicle's driver and there is no dispute with regard to the Insurance Company, ought to have allowed the claim petition on the said ground.

8.In view of the aforesaid observations, this Court is of the view that the award passed by the Tribunal has to be necessarily set aside and the appellant is entitled to claim a sum of Rs.69,260/- with interest at the rate of 7.5% interest per annum from the date of petition till the date of realization. Accordingly, the award passed by the Motor Accident Claims Tribunal, Sub Court, Theni in M.C.O.P.No. 40 of 2014 is set aside and this Civil Miscellaneous Appeal is allowed.

9.The second respondent / Insurance Company is directed to deposit the entire compensation amount as awarded by the Tribunal with accrued interest and costs as stated above to the credit of M.C.O.P.No.40 of 2014, on the file of the Motor Accident Claims Tribunal / Sub Court, Theni within a period of **two weeks** from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the appellant is permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs.

09.03.2023

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

1.The Motor Accident Claims Tribunal
(Sub Court),
Theni.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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C.M.A.(MD)No.7 of 2021

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