



C.M.A.(MD)No.667 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 15.12.2022

Delivered On : 02.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.667 of 2020

The Oriental Insurance Company Ltd.,
through its Divisional Manager,
1858, South Main Street,
Kaspa Thanjavur,
Thanjavur District.

.. Appellant /2nd Respondent

Vs.

1.Kanagaraj

... 1st Respondent / Petitioner

2.Kannan

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment, dated 16.07.2019, made in M.C.O.P.No.424 of 2012, on the file of the III Additional District and Sessions Judge - Motor Accident Claims Tribunal, Thanjavur at Pattukkottai.

For Appellant

: Mr.A.Ilango

For Respondents

: Mr.S.Deenadhayalan for R1

: R2 - Dismissed



C.M.A.(MD)No.667 of 2020

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed against the award, dated 16.07.2019, made in M.C.O.P.No.424 of 2012, on the file of the III Additional District and Sessions Judge - Motor Accident Claims Tribunal, Thanjavur at Pattukkottai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. A Brief substance of the claim petition in M.C.O.P.No. 424 of 2012, is as follows:

On 10.06.2012, at about 2.30 pm., when the petitioner was travelling in a two wheeler along the Pannavayal road, keeping the left side of the road, near Hariharan motors, a TATA Ace vehicle, bearing Registration No.TN-49-AW-7899 driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries and fractures. He was taken to Pattukkottai Government Hospital and after getting first aid, he was taken to Thanjavur Medical College Hospital. Due to the injuries, he was in a Coma stage for a period of 15 days. He took treatment as in patient from 10.06.2012 till 14.06.2012. Subsequently, he was admitted in a private hospital, by name,



C.M.A.(MD)No.667 of 2020

Thanjavur Vinodhan Hospital and he took treatment from 14.06.2012 till 04.07.2017. The petitioner sustained permanent disability, he claimed a sum of Rs.8,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 424 of 2012, is as follows:

The first respondent's vehicle was parked along the left side of the road. It was the petitioner, who rode the two wheeler in a rash and negligent manner and dashed against the Van and he invited the accident. The owner and the insurance company of the two wheeler are necessary parties to the case. The manner of accident, nature of injuries, mode of treatment, medical expenses are all denied. There is no permanent disability. There is no loss of income. The petitioner to be dismissed.

4. 3 witnesses were examined and 16 documents were marked, on the side of the claimant. 1 witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.3,45,710/- as compensation to be paid by the second respondent.



C.M.A.(MD)No.667 of 2020

WEB COPY

5. Against the order, the second respondent / appellant has filed this appeal on the following grounds:-

Even on the smell of the Alcohol, the claimant is not entitled for compensation. It was the claimant, who consumed Alcohol, and drove the vehicle and he did not maintain proper distance from the TATA Ace vehicle, which was parked for loading goods. The entire liability is on the claimant. Under Section 23 of The Rule of Road Regulations, the driver of the motor vehicle moving behind another vehicle must keep sufficient distance, if the vehicle in front should suddenly slow down or stop. The claimant is entitled only for Rs.50,000/- towards no fault liability.

6. On the side of the appellant, it is stated that the claimant has consumed Alcohol at the time of accident and that he invited the accident.

7. A perusal of the counter filed by the appellant before the Tribunal reveals that no such stand was taken by this appellant before the Tribunal. The appellant cannot introduce a new case at the stage of appeal. Hence, the contention of the appellant is not sustainable.



C.M.A.(MD)No.667 of 2020

WEB COPY

8. On the side of the appellant, it is stated that the TATA Ace vehicle was stationed for loading goods and at that time, the two wheeler hit on the rear side of the TATA Ace vehicle. P.W.2 has deposed that the vehicle was not parked at the time of accident and it was moving towards the main road.

9. Ex.P3 is the motor vehicle inspection report. It is seen from the records that the vehicle was parked across the road and at the time of accident, the vehicle was moving towards the main road. Since the vehicle was crossing the road at the time of accident, it is decided that the contention of the appellant is not correct and that the driver of the van is responsible for the accident.

10. The quantum was not disputed in the grounds of appeal and hence, it is decided that the quantum fixed by the Tribunal is reasonable.

11. Driving licence of the driver of the vehicle was marked as Ex.P6. R.C was marked as Ex.P4. Insurance policy was marked as Ex.P5. Policy was valid at the time of accident.



C.M.A.(MD)No.667 of 2020

WEB COPY

12. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. No costs.

(i) The quantum of compensation (ie.Rs.3,45,710/-) awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.3,45,710/-, (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimants is not entitled for interest for the default period, if there is any.

02.02.2023

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



WEB COPY



C.M.A.(MD)No.667 of 2020

To

- 1.The III Additional District and Sessions Judge -
Motor Accident Claims Tribunal,
Thanjavur at Pattukkottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.667 of 2020

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.667 of 2020

02.02.2023