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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.1177 OF 2023

and

C.M.P(MD)No.15685 of 2023

Gandhi Selwyn :Appellant/Second Respondent

.VS.

1.Fathima,minor,
represented through her mother and natural guardian
Nisha.Wife of Syed Sahul Hameed.

:Ist Respondent/Claimant

2.K.Subramanian

3.The Branch Manager,
United India Insurance Company Limited,
No.37/2, Mattappa Street,
Med Complex,
Second Floor,
Thenkasi,
Thenkasi District.

Having office at

Xavier Building,
Second Floor,
P.W.D.Road,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

4.Syed Masudu Ozhi

5.Mariappan



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6.The Branch Manager,
United India Insurance Company Limited,
No.110C, TNHB Colony,
Thenkasi,
Thenkasi District

having Office at
Xavier Building,
Second Floor,P.W.D.Road,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

:Respondent 2 to 6/Respondents
1 and 3 to 6.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act,1988 against the judgment and decree made in M.C.O.P.No.163 of 2018, dated 18.08.2022, on the file of the Motor Accidents Claims Tribunal(Special Court -Forest Offences Cases), Nagercoil, insofar as the appellant is concerned.

For Appellant

:Mr.A.Arumugam

JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the compensation awarded in M.C.O.P.No.163 of 2018, dated 18.08.2022, on the file of the Motor Accidents Claims Tribunal(Special Court-Forest Offences Cases), Nagercoil, insofar as the appellant is concerned.

2.The first respondent, as a claimant, filed the claim petition seeking compensation of Rs.50,000/- for the injuries and disability suffered in a road traffic accident on 16.08.2017. The case of the



first respondent/claimant is that she along with her family members were travelling in a Mahendra van bearing Registration No.TN 36 A9697 from Tenkasi to Attankarai Pallivasal in Tenkasi-Tirunelveli Main Road and the van is travelling from west to east direction. At 9.15 a.m., a tipper lorry bearing Registration No. TN 76 AC 4048 had come from opposite direction in a rash and negligent manner. In order to avoid head on collision, the Mahendra Van Driver took a left turn and that resulted in both the vehicles brushing against each other. As a result, the first respondent suffered injuries on her right hand. Thus the claim petition was filed.

3.The respondents 1 and 2 filed counter stating that the Mahendra Van was responsible for the accident.

4.In the counter filed by the respondents 3 and 6 before the Tribunal, it was contended that the tipper lorry alone was responsible for the accident.

5.During enquiry before the Tribunal, P.W.1 was examined and Ex.P1 to Ex.P25 were marked. R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R3 were marked. That apart, the disability certificate was marked as Ex.C1. On considering the oral and documentary



evidence, the learned Tribunal found that both the drivers of the van and lorry were 50% each responsible for the accident. Out of the compensation of Rs.6,26,650/- awarded, the respondents 1 and 2 were directed to pay Rs.3,13,325/- and the respondents 5 and 6 were directed to pay Rs.3,13,325/-. Challenging this award, questioning the liability on the lorry driver, the second respondent before the Tribunal, has filed this Civil Miscellaneous Appeal.

6.The learned counsel for the appellant submitted that it is seen from the evidence of P.W.1 that her daughter suffered injuries on her right elbow and no other occupants of the van had been injured in the accident. She also stated that she did not know how the lorry came from the opposite direction and that she knew of the accident only after hearing the noise, injured had kept her hand inside the window and that was the main reason for her suffering the injury. He further submitted that the charge sheet is not filed in this case and the FIR was closed under Section 468 of Cr.P.C. In the said circumstances, the lorry driver cannot be held responsible for the accident. The claimant has filed only the xerox copies of criminal case records. Therefore no reliance can be placed on the said records. In the said circumstances, the learned counsel for the appellant seeks to set aside the order passed against the appellant.



7.This Court considered the rival submissions made on either side and perused the records.

8.It is seen from the order of the learned Tribunal that P.W.1 was examined with regard to the accident and she produced Ex.P1 FIR, Ex.P2-Observation Mahazar, Ex.P3-Rough Sketch with regard to the accident and Ex.P24 and Ex.P25- Reports of the Motor Vehicle Inspector with regard to the damage caused to the vehicles involved in the accident. It is true that only copies of all these documents are produced. Even if those documents are xerox copies, the appellant is expected to oppose the reception of all those documents at the time of marking the documents. Having failed to do so, it is not open to the appellant now to contend that xerox copies of the documents cannot be relied, unless a ground is made out that copies of the documents are genuine documents or that they are incorrect and false documents. Such a defense is not taken. Therefore reliance placed on the xerox copies of the documents with regard to the accident cannot be challenged.

9.From the FIR allegations, it is seen that the accident had happened when the van driver was travelling in Tenkasi to Tirunelveli Main Road from west to east direction, the lorry driver



come from opposite direction in a rash and negligent manner. It is found that only to avoid a head on collision, the van driver took a left turn and in that process, both the vehicles brushed against each other on its sides. Ex.P2 Observation Mahazar and Ex.P3-rough sketch shows that the accident had happened on the left side of the east-west road, when the van driver was proceeding from west to east keeping his left side. The place of the accident shown in the rough sketch prima facie establishes that the lorry driver had come on the wrong side of the road forcing the van driver to take left turn. The Motor Vehicle Inspector's report shows that both the vehicles have damage on its right side. P.W.1 also confirms that the accident had happened while the van driver took left turn to avoid head on collision. Had the lorry driver had driven the lorry without coming to the wrong side of the road, the accident would not have happened at all and the claimant would not have suffered any injury, even if she kept her hand outside the window. Thus from the evidence available, it is patently clear that both drivers were responsible for the accident, especially, the lorry driver who came on the wrong side was the major contributor to the accident. However, the Tribunal found that it is right to fix the responsibility for the accident at 50% each on the drivers of both the vehicles. Considering the evidence available with regard to rash and negligent



riding of both the drivers, this Court does not want to disturb the finding of the Tribunal.

10. On the basis of oral and documentary evidence produced, the learned Tribunal arrived at a compensation of Rs.6,26,650/-. Considering the nature of the injuries, 30% disability suffered by the claimant, treatment taken and medical expenses incurred, this Court is of the view that the compensation awarded at Rs. 6,26,650/- is just and appropriate. In this view of the matter, there is no merit to entertain this Civil Miscellaneous Appeal.

11. Accordingly, this Civil Miscellaneous appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.11.2023

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

To

1. The Motor Accidents Claims Tribunal
(Special Court - Forest Offences Cases),
Nagercoil.



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



G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.1177 OF 2023
and
C.M.P(MD)No.15685 of 2023**

22.11.2023