



C.M.A. (MD)No.596 of 2021

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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.596 of 2021

Jaya Kadacham

...Appellant

Vs.

1. Suresh

2.The Branch Manager,
United India Insurance Company Ltd.,
rep. by its Branch Manager,
Monday Market,
Neeyoor Post, Eraniel Village,
Kalkulam Taluk,
Kanyakumari District.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records relating to the fair and decreetal order passed by the learned Subordinate Judge – cum – Motor Accidents Claims Tribunal, Padmanabapuram in MCOP.No.28 of 2016, dated 16.09.2019.

For Appellant : K.P.Narayanakumar

For R2 : Mr.A.S. Mathialagan



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registered against him. The vehicle has been insured with the second respondent / Insurance Company and hence, he claimed a sum of Rs. 4,00,000/- as compensation.

3. The first respondent took a stand that the appellant only drove the motorcycle in a rash and negligent manner and dashed the vehicle of the first respondent and sustained injuries.

4. The second respondent / Insurance Company stated that due to the negligent driving of the appellant, the accident has been occurred, but, the insurer of the appellant's vehicle was not added as a party in the proceedings.

5. To substantiate the case before the Tribunal, on the side of the appellant, he himself examined as P.W.1 and the Doctor, who gave treatment to the appellant was examined as PW.2 and Exs.P1 to Ex.P14 were marked. On the side of the respondents, two witnesses were examined as R.W.1 and RW.2 and investigation report has been marked.

6. On a perusal of the oral and documentary evidence, the



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Tribunal concluded that the appellant has not established the negligence on the part of the first respondent and dismissed the claim petition. Challenging the same, the present appeal came to be filed by the appellant herein.

7. The learned counsel appearing for the appellant would submit that merely because First Information Report has been registered against the appellant while he was admitted as in-patient in the hospital, that cannot be a determinative factor to hold that the appellant was negligent.

8. The appellant himself examined as PW.1 his evidence is not denied in the cross examination by the first respondent. Further, the Criminal Court has acquitted the appellant for the alleged offence of negligent driving and the appellant has also produced the medical bills before the Tribunal which clearly shows that he has spent a sum of Rs. 87,117/- and in this regard and he has produced the medical bills under Exs.P9 and P14 respectively. Despite the above documents have been filed and the evidence was adduced in this regard, the Tribunal has simply rejected the claim.



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9. The learned counsel appearing for the 2nd respondent / Insurance Company would submit that the Tribunal has rightly rejected the claim of the appellant since he has not established the negligence on the part of the first respondent.

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

11. The appellant himself examined as PW.1, though the First Information Report was originally filed against him for rash and negligent driving, it is relevant to note that the First Information Report was registered while he was admitted as in-patient in the hospital. Therefore, mere registration of the First Information Report, when a person was admitted in hospital it cannot not be concluded that he was negligent. Further, even the criminal case registered against the appellant was acquitted by the criminal Court.

12. The appellant himself examined as PW.1 and in his chief examination he has categorically stated that the first respondent drove the vehicle in a rash and negligent manner and dashed against him. When the



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PW.1 evidence was not denied by the first respondent during the cross examination, except putting the stand that the First Information Report was registered against him. The very factum of accident spoken in the chief examination that the first respondent only drove the vehicle in a rash and negligent manner, has not been denied in the cross examination. Such view of the matter, this Court is of the view that the accident took place only due to the rash and negligent driving of the first respondent, which was not denied in the cross examination. Therefore, the Tribunal finding is not on proper appreciation of evidence. PW.2- Doctor, who treated the appellant has also clearly stated that the accident took place on 25.07.2015. Immediately, he was admitted in the Sree Mookambika Institute Medical Science Hospital, Kulasekaram and he had sustained three injuries on forehead and left hand and one of the injury sustained is grievous in nature and he has also spoken about the fact that he has spent about Rs.55,041/- towards Medical bills. In order to substantiate his contention, Ex.P14 discharge summary also marked. Apart from that, the petitioner has also spent a sum of Rs.32,070/- towards medical bills.

13. In such view of the matter, when the negligence on the part of the appellant is not disputed. The appellant is entitled to the



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amount actually spent by him towards medical bills i.e., a sum of Rs. 87,117/-. Since a sum of Rs.12,401/- included in the discharge summary, which was mentioned in the medical bills, the same has to be deducted. After deducting the said amount of Rs.12,401/- from the medical bills, the appellant is entitled to a sum of Rs.74,716/-. Considering the fact that the petitioner was admitted in the hospital as in-patient from 25.07.2015 to 03.08.2015, he is entitled to a sum of Rs.10,000/- towards extra-nourishment. Accordingly, the appellant is entitled to a sum of Rs. 84,716/- with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that appellant is not entitled to any interest for the delay period.

14. For all the reasons stated above, this Civil Miscellaneous Appeal is disposed of. No costs.

15. The second respondent / Insurance Company is directed to deposit the entire award amount with accrued interest and costs to the credit of MCOP.No.28 of 2016, on the file of the Motor Accidents Claims Tribunal / Sub Court, Padmanabapuram within a period of one month from the date of receipt of copy of this judgment. On such deposit, the



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appellant is permitted to withdraw the entire award amount with interest on
filing necessary application before the Tribunal.

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Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge – cum – Motor Accidents Claims Tribunal,
Padmanabapuram
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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