



Civil Miscellaneous Appeal No.696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.696 of 2023

Venkatesan

... Appellant

Vs.

1. A.Paramasivam

2. The Branch Manager,
M/s.United India Insurance Co Ltd.,
No.50-A, Pallivasal Street,
Perambalur

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order in M.C.O.P.No.265 of 2017 dated 30.09.2022 on the file of Motor Accident Claims Tribunal /Subordinate Judge, Perambalur.

For Appellant : Mr.S..Kamadevan

For Respondents : M/s.Jawahar for R1
Mr.D.Bhaskaran for R2



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JUDGMENT

This appeal was filed against the award passed by Motor Accident Claims Tribunal /Subordinate Judge, Perambalur in M.C.O.P.No.265 of 2017 dated 30.09.2022, dismissing the claim petition on the ground that the same is not maintainable.

2. The claimant filed a claim petition before the Tribunal on the ground that he was driving a Tata Ace vehicle owned by the 1st respondent on 04.06.2016 and at about 5.30 p.m, the offending vehicle was driven in a rash and negligent manner and in order to avoid hitting the offending vehicle, the claimant had to swerve the vehicle. As a result, the accident took place and the claimant suffered injuries to his elbow and shoulder. The claimant underwent treatment as an in patient for nearly three days. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.



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3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the claimant, based on the FIR that was registered in Crime No.356 of 2016. The Tribunal found that the claimant will not be entitled for compensation since he was the tortfeasor in this case. Accordingly, the claim petition was rejected.

4. The claimant aggrieved by the rejection of the claim petition has filed the present appeal before this Court.

5. Heard Mr.S.Kamadevan, learned counsel for appellant/claimant and Mr.J.Jawahar, learned counsel for 1st respondent and Mr.D.Bhaskaran, learned counsel for 2nd respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. In the instant case, the claimant had filed the claim petition



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under Section 167 of the Motor Vehicles Act. The learned counsel for appellant submitted that option is given to the claimant to either claim the compensation under the Motor Vehicles Act or under the Workmen's compensation Act. Therefore, even if the Tribunal is not inclined to entertain the claim under the Motor Vehicles Act, the Tribunal ought to have determined the compensation under the Workmen's Compensation Act.

8. Per contra, the learned counsel for insurance company submitted that if the claimant wanted the compensation to be paid under the Workmen's Compensation Act, the Tribunal is not the appropriate forum and the claimant should have approached the appropriate authority and sought for compensation. The learned counsel submitted that the claimant has chosen a wrong forum and therefore, the rejection of the claim petition by the Tribunal cannot be faulted and it does not require the interference of this Court.

9. In the considered view of this Court, the claimant actually intended to claim compensation only under the Workmen's



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Compensation Act. However, he has approached the wrong forum. Therefore, even if the Tribunal wanted to order compensation, it had no jurisdiction to entertain the claim under the Workmen's Compensation Act. Therefore, the ultimate decision that was rendered by the Tribunal cannot be faulted.

10. On carefully going through the materials, it is clear that the claimant was working under the 1st respondent and he was driving the vehicle belonging to the 1st respondent. At which point of time, the accident had taken place. Therefore, it can be safely concluded that the accident had taken place in the course of employment of the claimant.

11. The accident had taken place in the year 2016 and at this point of time, it will be too late to grant liberty to the claimant to approach the appropriate authority and seek for compensation under the Employees Compensation Act. In order to render substantial justice, this Court by itself can determine the compensation and direct the same to be paid to the claimant under the Employees Compensation Act. This Court is adopting this procedure to ensure that the claimant does not go through



one more round of litigation, considering the fact that the accident had taken place in the year 2016.

12. In the light of the above discussion, this Court will proceed to determine the compensation payable to the claimant under the Employees Compensation Act. The claimant was aged about 26 years and hence, this Court can fix the factor as 215.28. The wages can be fixed at Rs.8,000/- per month. The disability has been assessed at 24%. Therefore, the compensation under the head of loss of income due to disability can be fixed as Rs.2,48,002.56/- ($60/100 \times 215.28 \times 8000 \times 24\%$).

13. The claimant has also marked the medical bills as Ex.P4. On going through the same, it is seen that the claimant had incurred Rs.56,900/- towards medical expenses.

14. In the light of the above discussion, the compensation is fixed as follows :-



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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income due to Disability	Rs.2,48,002/-
2.	Medical expenses	Rs. 56,900/-
	Total	Rs.3,04,902/-
	Rounded off	Rs.3,05,000/-

15. The above compensation is liable to be paid by the second respondent with interest at 12% p.a. from the date of claim petition till the date of realization within a period of six weeks from the date of receipt of this judgment. On such deposit, the appellant/claimant is entitled to withdraw the same. Insofar as the payment of compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant/claimant.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

31.07.2024

Speaking Judgment/Non-speaking Judgment
Index :Yes/No
Neutral citation: Yes/No
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To, Motor Accident Claims Tribunal /Subordinate Judge, Perambalur.

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