



C.M.A.No.1219 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1219 of 2020

and

C.M.P.No.7835 of 2020

The Divisional Manager,
The New India Assurance Company Limited,
Third Party Claims Hub, Commercial Complex,
CSI Building 2nd floor, No.1, Officers Colony,
Vellore – 1. .. Appellant/2nd Respondent

Vs.

1.Dhatchinan .. Respondent/Petitioner

2.Karthi .. Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.04.2019 made in M.C.O.P.No.111 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tirupattur, Vellore District.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : No appearance

JUDGMENT



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This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree dated 29.04.2019 made in M.C.O.P.No.111 of 2014 on the file of Motor Accident Claims Tribunal/Special Sub-Court, Tirupattur, Vellore District on the question of liability.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- for the injuries sustained by the claimant in a road traffic accident that occurred on 30.12.2013.

3. The Tribunal after evaluating the evidence held that the accident occurred due to the rash and negligent driving of the rider of the motor cycle bearing Reg.No.TN 23-W-1914 and directed the appellant/insurance company of the Auto bearing Reg.No.TN-23-Y-1272 to pay a sum of Rs.2,25,495/- as compensation with interest at the rate of 7.5% per annum from the date of filing of petition till the date of realisation.

4. The learned counsel Mr.S.Dhakshnamoorthy, appearing for the appellant, would strenuously contend that the Tribunal having given finding



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that the accident occurred only due to rash and negligent driving by the rider of the motorcycle bearing Registration No.TN 23 W 1914, erroneously directed the appellant-Insurance Company, who is the insurer of the auto to pay the compensation.

5. Despite the receipt of notice, the respondents No.1 and 2 names were printed in the cause list, they neither appeared nor engaged the counsel.

6. Heard the arguments of the learned counsel for appellant Mr.S.Dhakshnamoorthy and perused the materials on record.

7. At trial, two witnesses are examined on the petitioner's side and Exs.P1 to P13 were marked. Ex.P3 is discharge summary. On the respondent's side, Mr.M.Baskar, staff of Regional Transport Office was examined as RW1 and the Insurance Investigator was examined as RW2. Investigation Report is Ex.R3.

8. It is the evidence of PW1/injured that on 30.12.2013, at about 9.00 p.m., while the petitioner was travelling as a passenger in the Auto bearing



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Reg.No.TN-23-Y-1272 along Burgur-Natrampalli NH road towards Natrampalli near Vellakkal Natham bridge due to rash and negligent driving of the said auto, he dashed against the Hero Honda two wheeler bearing Reg.No.TN-23-W-1974. In the result he sustained injuries.

9. Whereas, in the FIR.,(Ex.P1), the rider of the two wheeler is shown as accused and it has been stated that due to the rash and negligent driving of the above said two wheeler, the accident occurred. Relying upon the contents of the F.I.R.,, the Tribunal concluded that it is only because of the rash and negligent driving of the rider of two wheeler, the accident happened.

10. First Information Report is not a substantive piece of evidence. It is statement given by the complainant. It can be very well used for the purpose of contradiction and for corroboration. PW1 is the ocular witness. On the side of the respondent no ocular witness was examined. Therefore, necessarily relying upon the evidence of PW1, it is concluded that due to the rash and negligent driving of the driver of Auto (TN-23-Y-1272), the accident had happened. On the relevant date as policy was in force, the 1st respondent/owner of the Auto and his insurance company, the 2nd



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respondent are jointly and severally liable to pay compensation to the claimant/injured.

11. Based upon the aforesaid discussions, as it is concluded that the 2nd respondent/Insurance Company is liable to pay compensation.

12. In the result, this Civil Miscellaneous Appeal stands dismissed and a sum of Rs.2,25,495/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.111 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tirupattur, Vellore District. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. Consequently the connected Miscellaneous Petition is closed. No costs.

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ssn
Index : Yes / No



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Internet : Yes / No

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Tirupattur,
Vellore District.

2.The Section Officer,
VR Section,
High Court,
Madras.

R.KALAIMATHI, J.,



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