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CMA.No.3047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3047 of 2024

and

CMP.No.25207 of 2024

The Divisional Manager,
The Oriental Insurance Company Ltd.,
No.33-C/10, Lodge President Complex,
Thanjai Road, Tiruvarur, Tiruvarur District.

...Appellant

Vs.

1. Rajendran

2. Selvam

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the decree and judgment passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Nagapattinam in MCOP.No.210 of 2015 dated 23.02.2023.

For Appellant : Mr.R.Premchander

For Respondents : Mr.B.Madeswaran
for M/s.A.Jotheeswaran, for R1



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JUDGMENT

Challenging the judgment and decree dated 23.02.2023 made in MCOP.No.210 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Nagapattinam, the appellant has come up with this appeal.

2. Mr.B.Madeswaran, learned counsel takes notice on behalf of the 2nd respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the claimant that, on 14.05.2013 at about 12.30 am, when the 1st respondent/claimant was travelling as a pillion rider in the two wheeler bearing Regn.No.TN-51-AA-0390 owned and driven by the 2nd respondent insured with the appellant herein, the 2nd respondent drove the said two wheeler in a rash and negligent manner and hit the tree which was in the right side of the road, due to which, the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the 1st respondent/claimant filed a claim petition in MCOP.No.210 of 2015



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claiming a compensation of Rs.5,00,000/-. Before the Tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.10 and on the side of respondents, two witnesses viz. R.W.1 and R.W.2 were examined and exhibits R.1 and R.2 were marked and disability certificate was marked as Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence awarded a sum of Rs.1,02,000/- towards compensation payable by the appellant/insurance company and ordered for pay and recovery. Aggrieved by the same, the appellant/insurance company has come up with this appeal.

4. Learned counsel for the appellant/Insurance company submitted that the 2nd respondent/owner of the vehicle, who drove the two wheeler in which the 1st respondent/claimant travelled as a pillion rider at the time of accident gave a complaint before the law enforcing agency, marked as Ex.P1, in which it is stated that, an unidentified vehicle dashed against the two wheeler in which the claimant travelled as a pillion rider, causing the above accident. On the contrary, the 1st respondent/claimant deposed before the tribunal that, the above accident happened solely due to the rash and negligence on the part of the 2nd respondent and that the 2nd



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respondent was the one who drove the two wheeler in a high speed and recklessly and dashed against the roadside tree. Given this contradiction, the tribunal, without providing adequate adjudication, fastened the entire liability as against the appellant-insurance company, which is wholly unsustainable. Further, the compensation awarded by the tribunal under the various heads is also on the higher side, which must be interfered with. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing for the 1st respondent submitted that, by considering all the relevant documents, the Tribunal passed the present impugned award, which cannot be said to be erroneous and the quantum of compensation awarded by the tribunal is already on the lower side and the same does not require further reduction. Accordingly, he prayed for dismissal of the appeal.

6. Heard learned counsel on either side and perused the material documents placed on record.



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7. The main contention of the learned counsel for the appellant relates to the contradiction in the contents of the FIR which has been marked as Ex.P1 and the deposition of the 1st respondent/claimant has not been properly considered by the tribunal. It has been the consistent ratio laid down by the Courts that the FIR is not a substantive document and it has to be substantiated by acceptable positive legal evidence and whatever is spoken in the FIR need not be taken at its face value and when the 1st respondent/claimant examined himself as P.W.1 and clearly deposed the manner in which the accident had happened and stated that the accident had happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle/the 2nd respondent herein and when the deposition of the claimant before the Court is contra to the FIR, the deposition would survive over and above the FIR.

8. Therefore, when the ocular testimony has clearly pointed the finger on the 2nd respondent for rash and negligent driving, the mere fact that there is a contradiction in the contents of the FIR and the deposition of the 1st respondent alone cannot be the basis to disregard the negligence attributed to the 2nd respondent.



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9. When it is proved through cogent and convincing oral evidence in the form of P.W.1, the fact that the oral evidence is not in consonance with the FIR cannot be a reason to brush aside the oral evidence which has more evidentiary value than the documentary evidences.

10. Further, the Tribunal has passed an award based on the evidence of P.W.1. On perusal of the impugned award, it is seen that necessary witnesses such as the author of the FIR/the 2nd respondent and individual eye witness were not examined on the side of the appellant and that no contra evidence has been adduced by the appellant-Insurance Company in order to disprove the case of the claimant. In the absence of any contra evidence to the deposition of the P.W.1, the Tribunal, after considering the oral and documentary evidences, has rightly fixed the negligence on the part of the 2nd respondent/driver of the appellant insured vehicle and the said findings of the Tribunal cannot be interfered with.

11. With regard to quantum of compensation, it is the claim of the appellant that the compensation awarded by the Tribunal is highly



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excessive which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, by no stretch the compensation awarded in the appeal could be said to be excessive or disproportionate. Therefore, this Court is not inclined to interfere with the impugned award passed by the Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal stands dismissed, confirming the impugned award dated 23.02.2023 passed by the Tribunal in MCOP.No.210 of 2015 and the Appellant-Insurance company is directed to deposit the compensation awarded by the tribunal to the credit of MCOP.No.210 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the 2nd respondent, as ordered by the tribunal. On such deposit being made, the Tribunal is directed to transfer the said amount to the claimant directly to his bank accounts through RTGS within a period of two (2) weeks thereafter.



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There shall be no order as to costs in this appeal. Consequently, the connected Miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Nagapattinam.



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M.DHANDAPANI, J.

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