



C.M.A.(MD).No.670 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.02.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD).No.670 of 2007

and

M.P.(MD).No.1 of 2007 and C.M.P.(MD).No.5942 of 2019

The Divisional Manager,
The Oriental Insurance Company Limited,
16, North Veli Street,
Madurai – 1.

.. Appellant/2nd Respondent

Vs.

1.P.Mohan

.. 1st Respondent/Petitioner

2.V.Venkatasalam

..2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree passed by the Motor Accident Claims Tribunal, 1st Additional Sub Court, Madurai in M.C.O.P.No.1696 of 2001 dated 02.08.2004.

For Appellant : Mr.A.Elango
for Mr.C.Ramachandran



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JUDGMENT

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The present Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the award passed by the Tribunal to the claimant/first respondent herein in a motor accident occurred on 04.01.2001, wherein, the claimant has sustained injury on his head and got treatment in a private hospital for a day as inpatient and took treatment continuously causing loss of income and loss of earning capacity.

2. The Tribunal, having considered the evidence, has awarded a sum of Rs.13,500/- in toto, which includes compensation for the damage caused to the two wheeler, in which the claimant was the rider.

3. According to the appellant/Insurance Company, a technical issue has been raised stating that for the same accident, the rider of the two wheeler as well as the pillion rider has preferred two separate claim petitions. The Insurance Company has filed their detailed counter in the claim petition filed by the pillion rider. However, the Tribunal, which should have taken note of that counter for the claim petition filed by the rider of the two wheeler, also failed to take note of it and set the Insurance



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Company *ex parte* and proceeded. It is also contended that the Insurance Company, in fact, has filed an application to set aside the *ex parte* order dated 02.08.2004 and the same was dismissed.

4. This Court, while admitting the appeal, ordered notice to the respondents, but notice could not be served to the respondents and therefore, C.M.P.(MD).No.5942 of 2019 has been filed to take substituted service to the respondents by way of paper publication. But the said application is still pending and no orders have been passed.

5. The learned counsel appearing for the appellant submitted that the respondents have to be served and necessary orders may be passed in the application to take substitute of service. That apart, the learned counsel also submitted that the Tribunal ought to have given a fair opportunity to the Insurance Company to contest the matter, but the Tribunal had dismissed the application to set aside the *ex parte* order and passed an award in haste.

6. This Court finds force in the submissions made by the learned counsel for the appellant, however, taking note of the fact that it is not the



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case where the Insurance Company was not aware of the claim petition and the accident. In fact, in a connected claim petition arising out of the same accident, they have contested the matter and the Tribunal had passed an order fixing the liability on the Insurance Company. There cannot be two different yardsticks one for the rider of the two wheeler and another for the pillion rider in the case of this nature. Therefore, the order of the Tribunal awarding a sum of Rs.13,500/- for the injuries sustained by the first respondent need not be disturbed. This Court therefore holds that the award passed by the Tribunal, being fair and justifiable, for a technical reason, the same need not be interfered with. This will not serve the purpose and object of the Act.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected C.M.P.(MD). No.5942 of 2019 stands dismissed and M.P.(MD).No.1 of 2007 stands closed.

16.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm



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To

- 1.The 1st Additional Sub Court,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

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