



C.M.A.(MD)No.1386 of 2012

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Dated: 15.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1386 of 2012

and

M.P(MD) No.1 of 2012

M/s.National Insurance Co. Ltd.,
Through its Divisional Manager,
24, Kamarajar Bazaar,
Bodi, Theni District

...2nd Respondent/ Appellant

Vs.

1. M.Natarajan(Died)
2. S.Sivasubramanian
3. J.Chandra
4.N.Ranjith
5.N.Ajith

... Petitioner

..1st Respondents/Respondents

*(Respondents 3 to 5 are brought on record
as LR's of the deceased 1st Respondent vide
Court order dated 20.10.2023 made in
MP(MD) Nos. 1 to 3 of 2013)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 10.08.2009 passed in MCOP No.1259 of 2022 on the file of the IV Additional Sub Judge, Madurai /Motor Accident Claims Tribunal, Madurai.

For Appellant	: M/s.P.Malini
For R1	: Died
For R2	: No appearance
For R3 to R5	: Mr.S. Natesh Raja



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed as against the order passed in MCOP No.1259 of 2022 on the file of the IV Additional Sub Judge/Motor Accident Claims Tribunal, Madurai. Wherein the first respondent herein has filed petition for compensation for the damages caused to the car.

2. The Tribunal has awarded a sum of Rs. 1,69,468/- with interest @ 7.5% per annum from the date of petition till the realization of the amount. As against the award passed by the Tribunal the second respondent/Insurance company has filed the present appeal by disputing the quantum of amount.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

4. The brief facts of the case before the Tribunal are as follows:

The petitioner was proceedings in a maruthi car bearing Reg. No. TN 39 9699 from Madurai to Usilampatti, at that time the driver of the first respondent van bearing Reg. No. TN 60 A 2787 came in a rash and negligent manner and dashed against him, thereby they



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sustained injuries and the car was also damaged, for which he filed petition seeking compensation.

5.The brief averments the counter filed by the second respondent are as follows:

The petition is false. The averments made in the petition are all strictly proved by the petitioner. The accident was not taken place due to the negligence on the part of the driver of the first respondent on the other hand the accident took place due to the negligence on the part of the maruthi car. The age, income, occupation of the driver and the expenses incurred to the car are all denied and hence the petition filed by the petitioner is liable to be dismissed.

6. Before the Tribunal common order was passed along with MCOP No.674 of 2002. On the side of the petitioner he has examined P.W.1 to P.W. 5 and marked documents Ex.P.1 to P.20. On the side of the respondents they have examined R.W. 1 and R.W.2 and marked documents Ex.R.1

7. After analyzing the evidences adduced on both sides, the Tribunal has awarded a sum of Rs. 1,69,468/- with interest @ 7.5%



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per annum from the date of petition till the realization of the amount. Aggrieved by the said order the second respondent/ Insurance company has filed the present appeal on the ground of quantum.

8. The learned counsel appearing for the appellant would contend that the Tribunal has awarded a sum of Rs. 1,14,225/- towards damages for the car. The petitioner has marked Ex.P.7 alleging that bills paid by the petitioner for the damages caused to the car but he has not examined any witnesses to prove the said bill and merely produced the bill. Per contra, the respondents have examined R.W.1 and R.W.2 and marked documents. Ex.R.1 is the motor vehicle value report of the car and as per the report the damages was calculated only for a sum of Rs.49,723/-. R.W.1 is the motor vehicle report and thereby the respondents have proved that the value of the damages is only Rs.49,723/-, but the Tribunal failed to consider the above said evidence and erroneously awarded a sum of Rs. 1.14.225/- towards expenses for the damages of the car and in other heads awarded fair compensation, thereby the order passed by the Tribunal in respect of car bills is liable to be set aside.



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9. The learned counsel appearing for the respondent would contend that the petitioner has produced Ex.P.7 and the same reveals the amount spent by the petitioner for the damages caused to the car and P.W.1 categorically deposed about the expenses incurred by the petitioner towards car. Further the petitioner produced the photos showing that the front right side of the car was damaged and also marked photos but the second respondent has not even examined the car in person but only filed approximate estimate and the said R.W. 1 has not even inspected the vehicle and he gave report only based on the photos, thereby the report filed by the respondent is not acceptable one and the same have not been proved in accordance with law, therefore the Tribunal after taking into consideration all the aspects correctly awarded fair compensation, thereby the present petition is liable to be dismissed.

10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeals is :

i) whether the appeal is liable to be allowed or not?

11. In this case there is no dispute in respect of the accident and the involvement of the vehicle in the accident and there is no



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dispute in respect of negligence on the part of the driver of the first respondent. Already the Tribunal has fixed liability based on the evidences adduced on either side that the driver of the first respondent is liable to the accident. The appellant has not disputed the negligence. The Tribunal has awarded a total amount of Rs.1,69,468/- and the appellant only disputed the car bills and has not disputed the award passed in other heads. The main contention of the appellant/second respondent is that the Tribunal has awarded a sum of Rs. 1,14,225/- based on Ex.P.7 but the petitioner has not examined any witnesses to prove Ex.P.7. But P.W. 1 was examined and also marked Ex.A.7, Ex.A.3 motor vehicle inspector report and also filed photos of the car. On careful perusal of those documents it is seen that the car was heavily damaged. On the other hand the respondents have examined R.W.1 and marked Ex.R.1 stating that the value of the damages caused to the car is Rs.49723/- but during the cross examination the said R.W.1 admitted that he has not inspected the vehicle in person and only based on photos he prepared Ex.R.1.

12. Therefore the evidence of R.W.1 and Ex.R.1 are not acceptable in respect of fixing the value of the damages caused to the car. The Tribunal also after elaborate discussion came to



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conclusion that the petitioner proved the damages caused to the car and he paid the bills for the repairs of the car and the respondents have failed to prove their contention. Therefore the contention of the appellant that the Tribunal has awarded excess compensation in respect of damages caused to the car is not acceptable one.

13. In view of the above said discussions this Court is of the opinion that the present appeal has no merits and deserves to be dismissed.

14. In the result, the present Civil Miscellaneous Appeal stands dismissed and the order passed by the Tribunal in MCOP No.1259 of 2022 on the file of the IV Additional Sub Judge, Madurai is hereby confirmed. No costs. Consequently connected miscellaneous petition stands closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal ,
IV Additional Sub Judge, Madurai
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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