



C.M.A.(MD).No.885 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.12.2023

PRONOUNCED ON : 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.885 of 2012

and

M.P.(MD)No.2 of 2012

United India Insurance Company Limited,
Through its Branch Manager,
Mattappa Street, Tenkasi.

... Appellant

Vs.

1.Mani
2.A.Raju
3.Royal Sundaram Alliance Insurance Company Ltd.,
46, Whites Road, Chennai – 14.
4.S.Sudalaimuthu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order and decree dated 12.04.2011 passed in M.A.C.O.P.No.145 of 2009 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi.



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For Appellant	: Mr.I.Suthakaran
For 3 rd Respondent	: Mr.S.Srinivasa Raghavan
For R2 and R4	: No Appearance
For R1	: Died

JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and decree on certain counts passed by the Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi, in M.A.C.O.P.No.145 of 2009 dated 12.04.2011 by the appellant/4th respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.A.C.O.P.No.145 of 2009.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a case of injury. On 08.04.2009, at about 12.15 p.m, in Quilon to Tirumangalam National Highways Road, in the western side of Chockampatti O.P. Police Station which is 5 kms north east to Kadayanallur Police Station, the petitioner and his family went to Sastha Temple for the Panguni Uthiram Festival in an auto bearing registration 2/8



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No.TN-76-B-0046. The said auto was driven by the petitioner. While so a Maruti Omni car bearing registration No.TN-76-Y-8143 travelling from opposite east to west direction directly hit against the auto. The petitioner sustained severe injuries on his right leg and left hand and all over the body. Seeking to compensate these injuries, restricting the claim to Rs. 10,00,000/-, the claim petition has been filed by the petitioner.

4.The first respondent is the owner of the Maruti car, the second respondent is the insurance company with which the said Maruti car was insured and the third respondent is the owner of the auto driven by the petitioner. The fourth respondent is the insurance company with which the auto was insured. The second respondent had filed a counter refuting each and every allegations in the claim petition and an additional counter was also filed by the second respondent pleading that the auto was overloaded at the time of accident. A total number of eight persons travelled in the said auto. As the result of which, the driver lost control and had caused the accident. Hence, it is not necessary for the insurance company to indemnify the insurer. It was pleaded that instead of four persons nine persons travelled in the auto and thus resulted in the



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accident.

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5.The learned Tribunal has framed three issues. Four witnesses P.W.1 to P.W.4 were examined on the side of the petitioners and 23 documents Ex.P1 to Ex.P23 were marked. Four witnesses R.W.1 to R.W.4 were examined on the side of the respondents and six documents Ex.R1 to Ex.R6 were marked. The respondents 1, 3 and 4 were called absent and set exparte. On the basis of oral and documentary evidence and on the basis of arguments submitted by respective parties, the learned Tribunal proceeded to conclude that the accident had happened due to rash and negligent driving of both the vehicles and the contributory negligence was fixed on both the vehicles i.e. Auto and Maruti car. The learned Tribunal directed the respondents 2 and 4 to pay the compensation equally on 50%-50% basis. That apart the Doctor who had examined the petitioner had issued a certificate of partial permanent disability at 85% by observing the fact that the petitioner is a driver. However, considering the fact that his right hand is fully functional, the learned Tribunal has reduced 85% partial permanent disability as certified by the Doctor to 45% partial permanent disability and fixed a



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notional monthly income as Rs.3,000/- and considering the factum, the petitioner was 45 years at the time of accident, the relevant multiplier '15' was adopted and the head of partial permanent disability was calculated at Rs.2,16,000/- (Rs.3,000x12x15x45%). Further the Tribunal had passed the award under following heads:-

Head	Compensation awarded
(I)Partial Permanent Disability:	Rs.2,16,000/-
(ii)Loss of income for six months:	Rs.18,000/-
(iii)Medical Expenses:	Rs.9,000/-
(iv)Transportation:	Rs.5,000/-
(v)Extra Nourishment:	Rs.10,000/-
(vi)Pain and suffering:	Rs.30,000/-
Total compensation awarded:	Rs.2,88,000/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the appellant/fourth respondent/insurance company has been filed this Civil Miscellaneous Appeal on the ground that the learned Tribunal had failed to consider the factum of overloaded auto rickshaw, which was driven by the petitioner.



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7.A critical perusal of materials available on record would prove that the learned Tribunal had gone well into the fact that the auto driver/petitioner being the person who drove the auto rickshaw at the time of accident himself cannot be the petitioner. However, considering the fact that the owner of the auto is not the petitioner but the first respondent, the learned Tribunal had observed that the petitioner ought to have filed an application under Workmen's Compensation Act. However, considering the fact that the same would cause inordinate delay in the petitioner getting compensation, since already 50% of the liability has been fastened with the fourth respondent insurance company, the learned Tribunal proceeded under the Motor Vehicles Act, 1988.

8.However, at the time of arguments, the learned counsel for the third respondent submitted that already the entire 50% of compensation amount was deposited before the learned Tribunal.

9.In view of the same, this Court is not inclined to interfere in the award passed by the learned Tribunal. Accordingly, the Civil



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Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Motor Accident Claims Tribunal, Additional Sub Judge,
Tenkasi.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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