



C.M.A. (MD) No. 1609 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 02.01.2024

CORAM:

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

C.M.A.(MD)No.1609 of 2013

The Branch Manager
United India Insurance Company Ltd.,
12-A Kovai Road
Karur- 639 002

... Appellant/
2nd Respondent

Vs.

1. Parvatham

... 1st Respondent/
Petitioner

2.Arivymani

... 2nd Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 14.12.2012 made in M.C.O.P.No.217 of 2011 on the file of the Motor Accident Claims Tribunal/ Principal Sub Court, Karur.

For Appellant : Mr.N.Murugesan

For R1 : Mr.K.Sivabalan
for Mr.M.Bindran

For R2 : Mr.P.Athimoolapandian



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.217 of 2011 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Karur, wherein the first respondent herein filed a petition for compensation due to the injuries sustained by her in the road accident as against the second respondent and the petitioner herein.

2. The said petition was allowed in part and the tribunal has awarded a sum of Rs.1,70,000/- towards compensation @7.5% interest . As against the award passed by the Tribunal, the present appeal has been preferred by the second respondent/Insurance company.

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 petition averments are:

On 08.06.2011 at about 10.30 am., when the petitioner was proceeding with her son in a two wheeler bearing Reg. No TN 47 U 3303 towards Karur-Trichy main road near Kaliyapannoor the vehicle which came behind the petitioner bearing Reg. No. TN 47 V 4852 dashed against the petitioner's



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vehicle and thereby she fell down and sustained injuries. Immediately she was taken to hospital and she was treated there and incurred the sum of Rs. 30,120/-. Due to the accident she was unable to go for work. Prior to the accident she was earning Rs.6000/- per month and due to this accident she was unable to go to her regular work. Hence she filed this petition for awarding compensation for Rs.3,00,000/-

5. The brief facts of the counter filed by the first respondent:

The averments made in the petition with regard to the injuries and the manner of accident are denied as false. The accident took place due to the negligence on the part of the rider of the petitioner's vehicle. The first respondent is no way responsible for the accident. The first respondent vehicle was insured with the second respondent and the driver of the first respondent had valid license on the date of occurrence. Hence if any compensation is awarded the second respondent is liable to pay the same.

6. The brief facts of the counter given by the second respondent:

The counter filed by the second respondent is that the averments made in the affidavit are false. The manner of accident is denied. The first respondent has not co-operated with the second respondent and thereby the



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second respondent need not pay any compensation on behalf of the first respondent. The accident did not take place due to the rash or negligent on the part of the driver of the first respondent and the petitioner has to prove the injuries sustained by her and monthly income and the medical bills. The vehicle involved in the accident is TN 09 AP 4043 and the first respondent vehicle did not involve in the accident. However the compensation amount claimed by the petitioner is too high, hence the appeal is liable to be dismissed.

7. In order to prove the case of the petitioner she has examined P.W. 1 to P.W.3 and marked exhibits Exs.P.1 to Ex.P.13 and on the side of the respondent R.W.1 and R.W.2 were examined and Exs.R.1 to Ex.R.3 were marked.

8. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.1,70,000/- towards compensation with interest of 7.5 % 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 preferred this present appeal on various grounds.



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9. The learned counsel appearing for appellant/second respondent would contend that the vehicle involved in this case is TN 09 AP 4043 and not TN 47 V 4852 and in order to prove the case they have examined R.W.1 and R.W.2 and marked ExPs. R1 to R3. Infact the vehicle involved in this case in TN 09 AP 4043 and thereafter, charge sheet was filed as if the vehicle involved in this case is TN 47 V 4852 after a period of nine months. Further the above said aspect has not been considered by the Tribunal. Further Tribunal has awarded a sum of Rs.70,000/- for partial permanent disability and Rs.50,000/- towards future medical expenses and the same are too high. Therefore the order passed by the Tribunal are liable to be set aside by allowing this appeal.

10. The learned counsel appearing for the first respondent/petitioner would contend that the vehicle involved in this case is TN 47 V 4852 and the investigation agency after due investigation filed final report as against the rider of the motor cycle bearing Reg.No. TN 47 V 4852 and the rider of the above said vehicle also admitted the offence and paid fine amount before the criminal court and thereby, the Tribunal has correctly fasten the liability as against the rider of the vehicle bearing Reg. No. TN 47 V 4852. The respondent failed to examine any witnesses, to rebut the evidence of the petitioner's side with regard to the involvement of the vehicle and also failed to examine the owner



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of the vehicle which alleged to have met with an accident. Therefore the Tribunal has correctly held that the vehicle TN 47 V 4852 only involved in the accident and awarded reasonable amount. Therefore, the appeal is liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents the point for determination in this appeal is:

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

12. The contention of the appellant is that the vehicle involved in this accident is TN 09 AP 4043 and not TN 47 V 4852, but as per the first respondent/ petitioner vehicle TN 47 V 4852 only involved in this case and rider of the vehicle had ridden the vehicle in a rash and negligent manner and dashed against the petitioner's vehicle, thereby she sustained injuries. In order to prove the case of the first respondent / petitioner, they examined P.W 1 to P.W.3 and marked Exs.P.1 to Exs.P.13. P.W.1 has deposed about the involvement of the vehicle bearing Reg. No. TN 47 V 4852 and the First Information Report also registered as against the vehicle bearing Reg. No. TN 47 V 4852. Thereafter the investigation agency has filed final report as against the rider of the vehicle TN 47 V 4852 and the rider of the vehicle also admitted the offence before the criminal Court and paid the fine amount. Therefore the



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vehicle involved in the accident is TN 47 V 4852 as per the evidence adduced by the petitioner side.

13. In order to rebut the evidence of the first respondent/petitioner, the appellant/second respondent examined R.W.1 and R.W.2 and marked Exs.R.1 to Ex.Rs.13. As per the evidence of R.W.1 the accident took place due to the vehicle involved in the accident TN 09 AP 4043. R.W.1 is doctor who recorded statement at the time of the admission for treatment. However there is no whisper as to who told the number of vehicle TN 09 AP 4043. Further the person who told the number to the doctor has not been examined as witness by the appellant/second respondent. Therefore the appellant/second respondent failed to prove that the vehicle involved in the accident is TN 09 AP 4043 and not TN 47 V 4852. The trial Court also taking into consideration of all the evidence adduced on either side fairly came to conclusion that the claimant has proved the accident which occurred due to the rash and negligent driving on the part of the rider of the vehicle bearing Reg. No. TN 47 V 4852. Further a sum of Rs.70,000/- was awarded for partial permanent disability, based on the disability certificate given by the doctor who gave treatment to the claimant. The Tribunal has also awarded Rs.2000/- per percentage of disability and also awarded a sum of Rs.50,000/- towards future medical expenses since four teeth have to be replaced and surgery has to be done for the bone fracture.



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Therefore the award passed by the Tribunal is reasonable one and this Court has no warrant to interfere with the award passed by the Tribunal. Therefore as discussed above, this Court is of the opinion that there is no merits in the appeal and is liable to be dismissed.

14. Accordingly this Civil Miscellaneous Appeal is dismissed and the impugned award dated 04.12.2012 passed in M.C.O.P.No.217 of 2011 on the file of the Motor Accident Claims Tribunal/Principal Sub Court, Karur, is confirmed. The appellant/insurance company is directed to deposit the entire award amount with interest and costs, within period of two months from the date of this judgment, if not already deposited. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount together with interest and costs by filing application before the Tribunal.

02.01.2024

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

1. The Motor Accident Claims Tribunal/
Principal Sub Court, Karur .
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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