



1197 of 2014

C.M.A.(MD).No.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1197 of 2014

and

M.P(MD) No.1 of 2014

M/s.United India Insurance Co.Ltd.,
Through its Divisional Manager,
Opposite to Petrol Bulk,
Visakappattinam.

... Appellant/2nd Respondent

-VS-

1. P.S.Nagarajan

... 1st Respondent/Petitioner

2.Senthil

... 2nd Respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, against judgment and decree dated 13.08.2014 passed in MCOP.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Dindigul and set aside the same.

For Appellant

: Mr.K.Sasi Prabha
for Mr.G.Prabuh Rajadurai

For R1

: Mr.R.Parthiban



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For R2 : Not living in the address

J U D G M E N T

This Civil Miscellaneous Appeal is filed to set aside the order passed in MCOP.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Dindigul, wherein, the first respondent herein has filed a claim petition for claiming a compensation of Rs.5,00,000/- (Rupees Five Lakhs only) for the injuries sustained in the road accident.

2. The Tribunal has awarded a sum of **Rs.1,89,560/- (Rupees One Lakh Eighty Nine Thousand Five Hundred and Sixty only)** towards compensation with interest at the rate of 7.5% per annum and directed the appellant to pay the said amount to the first respondent. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 05.07.2007 at about 04.00 p.m, when the petitioner was riding in a two wheeler bearing Registration No. TN-57-L-1302 as a pillion rider along



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with one Selvaraj, who was riding the Motor cycle proceeding near Badlagundu – Sempatti Road, the driver of the first respondent's Tipper Lorry bearing registration No.TN-30-AA-1158 came in a rash and negligent manner and dashed against the motorcycle. As a result of which, the rider of the motorcycle the said Selvaraj died on the spot and the petitioner, who is the pillion rider has sustained grievous injuries all over the body. He was taken to Government Hospital, Badlagundu and thereafter, he was shifted to the Government Rajaji Hospital, Madurai. However, he suffered permanent disability. Since, the accident occurred due to the rash and negligence on the part of the driver of the lorry, he claimed compensation of **Rs.5,00,000/- (Rupees Five Lakhs only)**.

4. The gist of the counter filed by the second respondent are as follows:

The averments made in the petition are all false and the petition is not maintainable either in law or facts. The accident took place due to negligence on the part of the rider of the motorcycle. The second respondent denied the age, income and occupation of the petitioner. However, the claim made by the petitioner is too high and the petition is liable to be dismissed.



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5. In order to prove the case of the petitioner, the petitioner was examined as P.W.1 and P.W.2 was also examined and marked Exs.P1 to P.7 and on the side of the respondents, R.W.1 and R.W.2 were examined and Exs.R1 to R.3 were marked.

6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of **Rs.1,89,560/- (Rupees One Lakh Eighty Nine Thousand Five Hundred and Sixty only)** towards compensation with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realization by directing the second respondent/Insurance Company to pay the amount.

7. Aggrieved over the award passed by the Tribunal, the second respondent/Insurance Company has preferred the present appeal by disputing the liability.



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8. The learned counsel appearing for the appellant/second respondent would contend that the accident took place due to the negligence on the part of the rider of the motorcycle and the driver of the first respondent's lorry is no way responsible for the accident. Since the accident took place due to the negligence on the part of the rider of the motorcycle, the appellant/second respondent has no liability to pay any compensation and the first respondent/petitioner has not impleaded his owner and insurer of the motorcycle. Hence, the petition is liable to be dismissed. But, the tribunal without considering the above said aspect, awarded the compensation by fixing the liability against the appellant/second respondent. Hence, the order passed by the tribunal is liable to be set aside. He would further contend that already, for the very same accident, another petition was filed before the Motor Accident Claims Tribunal, Melur, Madurai and the tribunal fixed the 30% liability as against the rider of the motorcycle and fixed 70% liability as against driver of the lorry.

9. The learned counsel appearing for the first respondent/petitioner would contend that the accident took place due to the negligence on the part



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of the driver of the lorry and FIR has been registered as against the driver of the lorry. Before the tribunal, on the side of the first respondent/petitioner, the petitioner was examined as P.W.1 and he has categorically deposed about the negligence on the part of the driver of the first respondent's lorry and the police after investigation filed final report as against the driver of the first respondent's lorry. The tribunal after considering all the evidences come to the conclusion that the negligence on the part of the driver of the first respondent and fixed the liability on the appellant/second respondent. On the side of the appellant/second respondent, there was no eye witness to the occurrence. Therefore, the tribunal has correctly fixed the liability on the appellant/second respondent. Hence, the appeal is liable to be dismissed.

10. This Court after hearing the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the records including the order passed by the Tribunal, the point for determination in this appeal is:

(i) Whether the accident took place due to negligence on the part of the driver of the first respondent or not?



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11. In this case, there is no dispute in respect of the accident and the involvement of the vehicle. According to the appellant/second respondent, the accident took place due to the negligence on the part of the rider of the two wheeler. On the side of the first respondent/petitioner, in order to prove the case, P.W.1 was examined and P.W.1 clearly deposed about the negligence on the part of the lorry driver of the first respondent. On the side of the appellant/second respondent, there is no eye witness to the occurrence and there is no evidence about the negligence on the part of the rider of the two wheeler. P.W.1 is the eye witness to the occurrence. The FIR also registered as against the lorry driver of the first respondent. After investigation, the police filed a final report. The tribunal after considering the evidences adduced by both sides, fixed the liability on the lorry driver of the first respondent. Though, the appellant/second respondent has argued that in another case, for the same accident, the tribunal has fixed the liability 30% liability as against the rider of the motorcycle and fixed 70% liability as against driver of the lorry, based on the evidences adduced by both sides, the tribunal has come into the fair conclusion that the accident took place due to the negligence on



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the part of the lorry driver of the first respondent and fixed the liability on the appellant/second respondent. Therefore, there is no infirmity or perversity in the order passed by the Tribunal. Therefore, this Court finds no warrant to interfere with the order passed by the Tribunal.

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

14. In the result, the Civil Miscellaneous Appeal stands dismissed and order passed in MCOP.No.95 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Dindigul, dated 13.08.2014, is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

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

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1. The Motor Accidents Claims Tribunal (Additional Sub Court),
Dindigul,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL,J.

dss

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