



C.M.A(MD)No.549 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19.02.2024

CORAM:

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

C.M.A(MD)No.549 of 2014

Branch Manager,
Oriental Insurance Company Limited,
5, G.H.Road,
Theni District.

... Appellant/2nd Respondent

Vs.

1.Vijeyapandi

... 1st Respondent/Petitioner

2.Balasubramanian

... 2nd Respondent/1st Respondent

*(Second respondent remained ex parte
before the lower Court)*

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the award of Rs.1,05,000/- (Three Lakh Five Thousand Only) passed in M.C.O.P.No.259 of 2010, dated 01.08.2013 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Dindigul.

For Appellant : Mr.K.Balasubramanian

For R-1 : No appearance

R-2 : Dismissed



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.259 of 2010 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Dindigul, wherein the first respondent herein has filed the claim application for an injury sustained by the road accident and the Tribunal has awarded a sum of Rs.1,05,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization of the amount. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred by the Insurance Company / second respondent.

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

3. The gist of the averments of the petition before the Tribunal are as follows:

On 02.06.2009 at about 08.00 am, when the petitioner was walking in a road, at the time the first respondent vehicle bearing Registration



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No.TN 72 K 1359, which was driven by a driver in a rash and negligent manner and dashed against the petitioner. Due to which, he sustained grievous injury and he permanently disabled. The first respondent vehicle was insured with the second respondent on the date of accident. Thereby, the respondents are liable to pay compensation to the petitioner.

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

The petition is false, not maintainable and liable to be dismissed. The accident did not take place due to the negligence on the part of the driver of the first respondent. The occurrence happened due to the negligence of the petitioner. The respondents denied the age, income and occupation of the petitioner and the award claimed by the petitioner is too high. Hence, the petition is liable to be dismissed.

5. Before the Tribunal, in order to prove the case of the petitioner, the petitioner has examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.4 and on the side of the respondents, R.W.1 and R.W.2 were examined and marked Exhibits R.1 to R.4.



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6. After perusing the materials available on record, the Tribunal has awarded a sum of Rs.1,05,000/- towards compensation. As against the order passed by the Tribunal, the Insurance Company / second respondent has preferred this Civil Miscellaneous Appeal by disputing the quantum of the amount and other grounds.

7. The learned Counsel appearing for the appellant / second respondent would contend that the accident did not take place due to the negligence on the part of the driver of the first respondent and the petitioner himself without observing the traffic rules, invited the accident by his own negligence and thereby, the appellant / second respondent is no way liable to pay compensation. Further, the Tribunal has awarded an excess amount and the petitioner has not sustained any grievous injuries and even as per the medical evidence, the percentage of the disability is only 45% and the Tribunal has awarded a sum of Rs.2,000/- for percentage of disability and in other heads also, the Tribunal has awarded excess amount. Hence, the award passed by the Tribunal is liable to be modified and the award amount is liable to be set aside.



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8. There is no representation on the side of the respondents.

9. This Court after hearing the appellant side and upon perusing the documents, including the order of the Tribunal, the point for determination in this appeal is:

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

10. According to the appellant / second respondent, the accident did not take place due to the negligence on the part of the driver of the first respondent. However, the petitioner himself examined as P.W.1 and he deposed about the negligence on the part of the driver of the first respondent and the Tribunal also fixed liability as against the first respondent. The appellant / second respondent failed to examine any witnesses in respect of negligence and thereby, the order passed by the Tribunal by fixing the liability as against the first respondent is in order.

11. The next contention of the appellant is that the Tribunal has taken a sum of Rs.2,000/- per for 1% of disability and thereby, awarded the excess amount. This Court has perused the records and the order



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passed by the Tribunal. The Tribunal has already taken a sum of Rs.2,000/- for 1% of disability, that is reasonable and in other heads also, the Tribunal only awarded a reasonable amount. The Tribunal has awarded a sum of Rs.15,000/- towards pain and sufferings, Rs.80,000/- towards permanent disability and loss of income and Rs.10,000/- towards extra nourishment. In total, the Tribunal has awarded a sum of Rs.1,05,000/-. Thereby, it is not appropriate to interfere with the order passed by the Tribunal.

12. In view of the above said discussions, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal stands dismissed. The order passed by the Tribunal in M.C.O.P.No.259 of 2010 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Dindigul is confirmed. There shall be no order as to costs.

19.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Motor Accident Claims Tribunal cum Additional Sub Judge,
Dindigul.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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