



C.M.A(MD)No.816 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.03.2024

CORAM:

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

C.M.A(MD)No.816 of 2014

and

M.P(MD)No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
East Main Street (T.S.No.4123),
Pudukkottai Town & District.

... Appellant/Respondent

Vs.

Chinnathambi

... Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, to set aside the fair and decreetal order, dated 16.12.2011 made in M.C.O.P.No.35 of 2004 on the file of the Motor Accident Claims Tribunal (Fast Track Court / Additional District Judge), Pudukkottai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.35 of 2004 on the file of the Motor Accident Claims Tribunal, Fast Track Court / Additional District Judge, Pudukkottai, wherein the respondent herein has filed a petition for claiming compensation due to the injury sustained in a road accident.

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 brief facts of the case are as follows:

On 28.05.2003 at about 03.30 am when the petitioner was proceeding near Mundiambakkam along with his relatives in a van, at that time, a tractor came in an opposite direction in a rash and negligent manner and turned left side without any signal. Hence, the petitioner in order to avoid the hit against the tractor, he turned his vehicle and thereby, dashed against the flag-post. Due to which, he sustained grievous injuries and other passengers travelled in the van also sustained injuries and



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thereby, he claimed compensation of Rs.3,00,000/-.

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4. Counter averments of the second respondent are as follows:

The petition is not maintainable in law and on facts. The second respondent denied the age, income and occupation of the petitioner. The petitioner is the owner of the vehicle and he himself drove the vehicle and caused the accident due to his own negligence. The petitioner is a tort-feasor. Hence, he is not entitled to any compensation from the respondent. The petitioner paid a sum of Rs.100/- towards premium to cover the risk of the owner. Therefore, he is only entitled to compensation through that coverage. Therefore, the petition is liable to be dismissed.

5. Before the Tribunal, on the side of the petitioner, he examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.8. On the side of the respondent, R.W.1 was examined and marked Exhibit R.1.

6. After considering the evidences adduced on both sides, the Tribunal has awarded a sum of Rs.1,25,821/- by directing the second respondent to pay the said amount. As against the award passed by the



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Tribunal, the present Civil Miscellaneous Appeal has been preferred by the Insurance Company / second respondent on the ground of liability.

7. The learned Counsel appearing for the appellant / respondent would contend that the petitioner is a tort-feasor and he cannot be treated as third party and he is not entitled to claim any compensation through this petition. Though the petitioner paid premium of personal accident coverage, he is only entitled to Rs.2,00,000/- that too not through the M.C.O.P case. The Tribunal has not considered the above said aspects and awarded compensation. Therefore, the order of the Tribunal is liable to be set aside by allowing this appeal.

8. There is no representation on the side of the respondent, despite several adjournments given to him.

9. This Court had heard petitioner side and perused the records. Upon perusing the records, the point for determination in this appeal is:

i) Whether the appeal has to be allowed or not?



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10. In this case, there is no dispute that the vehicle was involved in the accident and on the date of accident, the vehicle was insured with the appellant / respondent. The only contention of the appellant is that the respondent / petitioner is a tort-feasor, who is the owner of the vehicle and thereby, he cannot claim any compensation and he is liable to pay only Rs.2,00,000/- for the personal accident coverage. But the Tribunal treated the petitioner as third party and awarded compensation.

11. This Court has perused the records. On perusal of the records, it is observed that the petitioner has filed the petition for claiming compensation, as if he is a third party. Since the petitioner is the owner of the vehicle and he is a tort-feasor, he cannot claim any compensation from the appellant. However, there is a policy coverage under personal accident coverage and he is entitled to Rs.2,00,000/- through that policy. The Tribunal has only awarded a sum of Rs.1,25,821/- by treating the petitioner as a third party. Since the petitioner is a tort-feasor and he is the owner of the vehicle, he cannot be treated as third party. Therefore, the finding of the Tribunal that the petitioner is a third party is not sustainable and the same is liable to be set aside. However, the Tribunal has awarded



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only Rs.1,25,821/- and the coverage is up to Rs.2,00,000/-. Therefore, this Court without altering the quantum of the amount by holding that the petitioner is not a third party and he is the owner of the vehicle. Being the tort-feasor, he cannot claim compensation. However, he is entitled to receive compensation under the personal accident coverage. Therefore, this Court is of the opinion that the petitioner is entitled to compensation under personal accident coverage. There is no dispute in respect of the quantum of the amount. The respondent / petitioner has also not filed any appeal as against the quantum of the amount. Therefore, this Court without altering the quantum of the amount inclined to set aside the findings of the Tribunal in respect of the status of the petitioner as third party. Thus the point is answered.

12. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

28.03.2024



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

To

- 1.The Motor Accident Claims Tribunal
(Fast Track Court / Additional District Judge),
Pudukkottai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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