



*C.M.A(MD)No.950 of 2014*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29.01.2024

CORAM:

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

**C.M.A(MD)No.950 of 2014**

The Branch Manager,  
Cholamandalam M.S.General Insurance  
Company Limited, "Dare House",  
2nd Floor, NSC Bose Road,  
Chennai-600 001.

... Appellant/2nd Respondent

Vs.

1.Ravichandran

... Respondent/Petitioner

2.Murugesan

... Respondent/1st Respondent

**Prayer :** This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the fair and decretal order, dated 03.12.2013 made in M.C.O.P.No.159 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur.

For Appellant : Mr.S.Srinivasa Raghavan

For R-1 : Mr.M.Bindran

For R-2 : No appearance



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### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.159 of 2012, dated 03.12.2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur, wherein the first respondent herein has filed a claim petition before the Tribunal.

2. The Tribunal has awarded a sum of Rs.1,66,597/- as against the second respondent and the appellant herein. As against the order, the appellant / second respondent has preferred this Civil Miscellaneous Appeal on the ground of liability.

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 as follows:**

On 25.11.2011 at about 07.10, when the petitioner was riding in a vehicle from Karur to Coimbatore Road near Amaravathi Hospital in two



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wheeler bearing registration No.TN 47 R 1287 at the time, a Mini Door Vehicle bearing Registration No.TN 47 V 5547 came behind the petitioner in a rash and negligent manner and dashed against the petitioner. Due to which, he sustained grievous injury and immediately he was taken into Amaravathi Hospital, Karur. Thereafter, he had taken treatment and went to the hospital at Coimbatore. Due to the accident, the petitioner permanently disabled. Before the accident, the petitioner was earning a sum of Rs.20,000/- per month and due to his permanent disability, he was unable to do his work. Thereby, the petitioner seeks compensation. The accident was took place due to the negligence on the part of the driver of the first respondent. Hence, he prayed for compensation.

**5. The brief facts and counter filed by the second respondent are as follows:**

The age, income, occupation of the petitioner are all denied by the second respondent. The averments made in the petition are false, frivolous and not maintainable and the occurrence took place due to the negligence on the part of the petitioner, who is the rider of the two wheeler and the case was initially registered as against the driver of the two wheeler and



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thereafter, it was closed as 'mistake of fact'. Therefore, the second respondent / Insurance Company is not liable to pay any compensation to the petitioner. The rider of the two wheeler has no license to drive the vehicle. Since the accident was not happened due to the negligence on the part of the auto, the second respondent is not liable to pay any compensation. Hence, the petition is liable to dismissed.

6. 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 two wheeler and not on the part of the driver of the first respondent. Moreover, the case was closed as mistake of fact and thereby, the second respondent / Insurance Company is not liable to pay any compensation. 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.9 and on the side of the respondents, they examined R.W. 1 to R.W.3 and marked as Exhibits R.1. But the Tribunal without considering the evidence adduced on the appellant / second respondent's side, erroneously fixed the liability on the appellant / second respondent. Thereby the present Civil Miscellaneous Appeal has been preferred.



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7. The learned Counsel appearing for the first respondent / petitioner would contend that the occurrence took place due to the negligence on the part of the driver of the Mini Door Vehicle and FIR also registered as against the driver of the first respondent. In order to prove the negligence on the part of the driver of the first respondent, the petitioner himself has examined as P.W.1 and he deposed about the negligence on the part of the driver of the first respondent and no any witnesses were examined on the side of the respondents to prove the negligence. Therefore, the Tribunal after taking into consideration of all the aspects, fixed the negligence on the part of the driver of the first respondent and awarded fair compensation. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

8. This Court after hearing both sides 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?



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9. In this case, there is no dispute with regard to the involvement of the vehicle in the accident and the appellant had only disputed the negligence on the part of the driver of the first respondent. In order to prove the negligence on the part of the driver of the first respondent, the petitioner himself examined as P.W.1 and he deposed about the negligence on the part of the driver of the first respondent, FIR also registered as against the driver of the first respondent. To rebut the evidence of petitioner side, the respondents have examined R.W.2, the Investigation Officer of the criminal case and he deposed about the registration of FIR and investigation. But on the side of the respondents, none of the eye witnesses, who witnessed the occurrence have not been examined.

10. Per contra, on the side of the petitioner, the petitioner himself was examined as P.W.1, who witnessed the occurrence has deposed about the manner of the occurrence. As per the evidence of P.W.1, the occurrence took place due to negligence on the part of the driver of the first respondent. FIR also registered as against the driver of the first respondent. R.W.2, who is the Investigation Officer also in this evidence



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categorically admitted that the criminal case was closed under Section 468 of the Cr.P.C., since the charge sheet was not filed within the time limit. Therefore, there is no evidence to show that the occurrence was not happened due to the negligence on the part of the driver of the two wheeler.

11. Per contra, the petitioner's side evidence and documents shows that the occurrence took place due to the negligence on the part of the driver of the first respondent. Therefore, the Tribunal has fairly concluded that the occurrence took place due to the negligence on the part of the driver of the first respondent. In the absence, any contra evidence, the evidence of P.W.1 is reliable and acceptable. Therefore, the order passed by the Tribunal in respect of negligence is in order and there is no perverse or infirmity found on the order of the first respondent Tribunal. Therefore, this Court has no warrant to interfere with the order of the Tribunal.

12. In this case, there is no dispute with regard to the quantum of the award. The Tribunal has awarded a sum of Rs.1,66,597/- and the first respondent / petitioner has not filed any appeal by disputing the quantum



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of the amount. The appellant / second respondent also not disputed the quantum and only disputed on the ground of liability. This Court in previous para decided that the accident took place due to the negligence on the part of the driver of the first respondent and there is no dispute that the first respondent vehicle was insured with the second respondent Insurance Company on the date of accident. Therefore, the Appellant / second respondent is liable to pay the award amount. Thereby this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.

13. In the result, this Civil Miscellaneous Appeal stands dismissed and the impugned award, dated 03.12.2013 passed in M.C.O.P.No.159 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Karur is confirmed. It is represented by both the learned Counsels that already entire amount was deposited, thereby, the petitioner is at liberty to withdraw the amount by filing appropriate petition before the Tribunal. There shall be no order as to costs.

**29.01.2024**



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

To

- 1.The Motor Accident Claims Tribunal  
(Chief Judicial Magistrate),  
Karur.
- 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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