



C.M.A.(MD)No.1140 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1140 of 2016

Mr.Peter Samuel Puyalarasan

... Appellant/Claimant

-VS-

1. P.Martin Sagayaraj

2. M/s.National Insurance Company Limited,
Vigneswara Building,
Near Over Bridge,
No.2/7, Pudukottai Road,
Trichy – 620 020.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.1149 of 2006, on the file of the Motor Accident Claims Tribunal cum III Additional Sub-Judge, Trichirappalli, dated 18.11.2010 for enhancement of compensation.

For Appellant : Mr.Sarvagan Prabhu
for Mr.T.A.Omprakash

For Respondents : Mr.D.Sivaraman– for R2



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.1149 of 2006, on the file of the Motor Accident Claims Tribunal cum III Additional Sub-Judge, Trichirappalli, wherein, the appellant herein has filed the claim petition for compensation stating that he met with an accident and sustained injuries in the road accident.

2. The Tribunal has awarded a sum of Rs.1,02,825/- (Rupees One Lakh Two Thousand Eight Hundred and Twenty Five only) towards compensation and directed the first respondent to pay the amount to the petitioner and the Insurance Company was exonerated. As against order passed by the Tribunal, the appellant/petitioner has preferred this appeal.

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



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

On 17.12.2005, (midnight) at about 00.15 hours, the petitioner along with others were proceeding in the first respondent's TATA SUMO bearing Registration No.TN-47-E-8293, near Gundur Maduraiveeran Nagar, Trichy to Pudukottai Road. While so, the driver of the vehicle drove the same in a rash and negligent manner and suddenly a cattle crossed the road and in order to avoid hitting against the cattle, the driver applied sudden break of the vehicle and thereby the vehicle dashed against a tree. Thereby, the petitioner sustained grievous injuries and permanent disability. The petitioner was aged about 44 years, he was working as Laboratory Assistant and he was earning a sum of Rs.8,000/- per month. Hence, he sought for a compensation of a sum of Rs.3,00,000/- (Rupees Three Lakhs only)

5. The brief averments in the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts. The second respondent denied the age, income and the manner of accident. The accident did not occur due to the negligence on the part of the driver of the first



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respondent, on the other hand the Car driver drove the vehicle in a rash and negligent manner. Therefore, the first respondent is liable to pay the compensation to the petitioner. Hence, the petition is liable to be dismissed.

6. Before the Tribunal, joint trial was conducted. On the side of the petitioner, P.W.1 to P.W.5 were examined and documents Ex.P.1 to P.24 were marked. On the side of the respondents, R.W.1 to R.W.3 were examined and documents Ex.R.1 and Ex.R.2 were marked and also Ex.C.1 was marked.

7. The Tribunal after considering the evidences adduced on either side, awarded sum of Rs.1,02,825/- (Rupees One Lakh Two Thousand Eight Hundred and Twenty Five only) towards compensation and directed the first respondent to pay the amount to the petitioner and the Insurance Company was exonerated. As against order passed by the Tribunal, the appellant/petitioner has preferred this appeal by disputing the liability.

8. The learned counsel appearing for the appellant would contend that the accident took place due to the negligence on the part of the driver of the first respondent. The first respondent vehicle was insured with the second



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respondent on the date of accident. There is no violation of condition of policy and thereby the second respondent is liable to pay compensation.

However, the Tribunal in the order held that the vehicle was used for rental purpose and the non transport vehicle was used for public purpose and thereby there is violation of condition of policy and exonerated the Insurance Company. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned counsel appearing for the second respondent would contend that the appeal is not maintainable. The owner of the vehicle has used the non-transport vehicle for public purpose and thereby violation of conditions of policy. The Tribunal after taking into consideration of the evidences of R.W.3 examined on the side of the respondents and fairly exonerated the Insurance Company by considering the violation of condition of policy. Therefore, the present appeal is liable to be dismissed.

10. This Court after hearing learned counsel appearing on either side and perusing the documents, including the order of the Tribunal, frames the following point for determination in this appeal:



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i. Whether there is a violation of policy conditions as alleged by the second respondent/Insurance Company?

11. In this case there is no dispute in respect of the negligence on the part of the driver of the first respondent. Already the Tribunal also rendered findings that the first respondent driver is liable for the accident and the accident took place due to the negligence on the part of the driver of the first respondent. The Insurance Company has not preferred any appeal as against the finding of the Tribunal and thereby, it is clear that the accident took place due to the negligence on the part of the driver of the first respondent. As far as the liability is concerned, according to the second respondent, there is a violation of conditions of policy and the vehicle was used for commercial purpose and thereby there is a violation of conditions of policy. To that effect R.W.3 was examined on the side of the respondent Insurance Company and he deposed that since the vehicle was rented to petitioner and others by the owner of the vehicle, the vehicle was used for commercial purpose. But at the same time, in the cross examination he admitted that he has no direct knowledge about, engagement of the vehicle for commercial purpose. Thereby, only because the petitioner and others have travelled in the vehicle,



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who are not relatives of the owner of the vehicle, he came to the conclusion that the vehicle was used for commercial purpose. There is no other evidences adduced by the second respondent/Insurance Company. Therefore, the evidence of R.W.3 is not sufficient to prove that the vehicle was used for commercial purpose and thereby violated the conditions of policy. The Tribunal, only based on the evidence of R.W.3 erroneously held that there is a violation of conditions of policy and the same is liable to be set aside.

12. In this case, there is no dispute in respect of the quantum of the amount and the petitioner also raised ground in respect of the liability alone. Therefore, the order passed by the Tribunal is liable to be set aside in respect of the liability.

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the order passed in M.C.O.P.No.1149 of 2006, on the file of the Motor Accident Claims Tribunal cum III Additional Sub-Judge, Trichirappalli, is modified to the effect that the petitioner is entitled to sum of Rs.1,02,825/- (Rupees One Lakh Two Thousand Eight Hundred and Twenty Five only) towards compensation and the second respondent/Insurance Company is



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liable to pay the said amount along with interest at the rate of 7.5% p.a from the date of petition till the date of realization. The second respondent/ Insurance Company is directed to deposit the amount within a period of two months from the date of this judgment. On such deposit being made by the second respondent, the petitioner is at liberty to withdraw the same. There shall be no order as to costs.

20.03.2024

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

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



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P.DHANABAL,J.

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