



C.M.A.(MD).No.884 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.884 of 2017

and

C.M.P(MD) No.9454 of 2017

The Branch Manager,
M/s.United India Insurance Company Limited,
Chettikulam,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/4th Respondent

-vs-

1. B.P.Sri Venkatesh

... 1st Respondent/Petitioner

2. S.Ajith

3. The Manager,
National Insurance Company,
Anguvilas Building,
North Car Street,
Near Head Post Office,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

4. Dhanarajan

5. J.Pethel Raja Victor

... Respondents 2 to 5/
Respondents 1 to 3 and 5



C.M.A.(MD).No.884 of 2017

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the learned Motor Accident Claims Tribunal/Chief Judicial Magistrate, Nagercoil, in M.C.O.P.No.33 of 2015, dated 22.04.2017 as against the appellant.

For Appellant : Mr.N.Dilip Kumar

For R1 : Mr.S.Sureshkumar

For R-3 : Mr.D.Rajkumar

For R4 and R5 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/ Insurance Company, challenging the award passed in M.C.O.P No. 33 of 2015, on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate, Nagercoil, on the ground of negligence and quantum.

2. According to the injured claimant, while he was riding a two wheeler in the Rani Thottam to Asaripallam Road from East to West direction, the Innova Car owned by the fifth respondent, driven by the third respondent was driven in a rash and negligent manner and dashed against the two wheeler. Due to the said impact, the petitioner was thrown away from the bike and he



C.M.A.(MD).No.884 of 2017

sustained grievous injuries on the left leg. Hence, the claimant had prayed for a compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

3. The Insurance Company of the Innova Car had filed a counter contending that there was no negligence on the part of the driver. On the other hand, the rider of the two wheeler was negligent and he had come in the wrong side of the road and therefore, the accident has taken place only due to the negligence on the part of the injured claimant. They further contended that the claimant was not having driving license on the date of accident.

4. The Tribunal, after considering the evidence on either side, has ultimately arrived at a finding that the accident has taken place only due to the negligence on the part of the driver of the Innova Car and has mulcted the liability upon the insurer of the Innova Car, namely, the appellant/Insurance Company.

5. The Tribunal, has arrived at the medical expenses based upon Ex.P7 and Ex.P.11, at Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only). The disability has been fixed at 10% and a sum of Rs.97,200/- (Rupees Ninety Seven Thousand and Two Hundred only) has been awarded under the said



C.M.A.(MD).No.884 of 2017

WEB COPY

head, a sum of Rs.50,000/- (Rupees Fifty Thousand only) has been awarded towards pain and suffering and a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) has been awarded towards loss of amenities. In total, a sum of Rs.4,22,200/- (Rupees Four Lakhs Twenty Two Thousand and Two Hundred only) has been awarded by the Tribunal. This award is under challenge in the present appeal has been filed.

6. According to the learned counsel appearing for the appellant, the two wheeler was travelling from east to west direction. Therefore, they should have stick on to the southern side of the road, instead, the accident having taken place on the northern side of the road, clearly indicates that the two wheeler was on the wrong side of the road, which resulted in the accident. When the negligence is on the part of the two wheeler, liability cannot be mulcted upon the Insurance Company of the Innova Car. He further pointed out that Ex.P.7 is a record of consolidate medical expenses. However, the Court has added the amount found to Ex.P.7 along with Ex.P.11 and therefore has arrived at double compensation under the head of medical expenses. Hence, he prayed for setting aside the award in entirety.



C.M.A.(MD).No.884 of 2017

WEB COPY

7. Per contra, the learned counsel appearing for the first respondent/ claimant had contended that the Car while taking a right turn from Gurukulam Road and entering into the Rani Thottam to Asaripallam road should have been more careful and therefore, the accident has taken place only due to the negligence on the part of the driver of the Innova Car. He further contended that there was no negligence on the part of the rider of the two wheeler.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. The injured claimant had contended that while he was travelling on the proper side of the road, the Innova Car came in the wrong lane and it has caused the accident. Ex.P.5 is the Inspection Report of the Motor Vehicle Inspector. A perusal of said Motor Vehicle Inspector's Report indicates that the front left side bumper of the Innova Car has been damaged. Therefore, it is clear that the two wheeler has dashed against the left side of the Innova Car, which was taking a turn on the right side. Hence, it is clear that there was no head on collision but on the other hand the vehicle that was coming from



C.M.A.(MD).No.884 of 2017

the east to west direction had dashed against the left side of the car, which is on the northern side of the road. Therefore, the claimant has also contributed to the accident. In such circumstances, the Tribunal was not right in mulcting the entire liability upon the driver of the Innova Car. The Tribunal ought to have deducted 10% towards contributory negligence on the part of the injured claimant.

10. It could be seen from Ex.P.7 and Ex.P.11 that the medical expenses have been consolidated under Ex.P7. Therefore, the amount in Ex.P7 and Ex. P.11 cannot be aggregated together. The medical expenses mentioned in Ex.P.7 to an extent of Rs.1,40,000/- can be taken for the purpose of the calculation of the award amount.

11. In view of the above said deliberations, the award amount is reduced to Rs.2,82,200/- (Rs.4,22,200/- (-) Rs.1,40,000/- = Rs.2,82,200/-). Deducting 10% of Rs.2,82,200/- towards contributory negligence, Rs.2,53,980/- (Rupees Two Lakhs Fifty Three Thousand Nine Hundred and Eighty only) is arrived at. The said amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. In case, the appellant/ Insurance Company has not deposited the



C.M.A.(MD).No.884 of 2017

WEB COPY

amount, the same shall be deposited within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above said observation, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2024

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

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Nagercoil.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.884 of 2017

R.VIJAYAKUMAR,J.

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C.M.A(MD)No.884 of 2017

27.06.2024