



C.M.A.(MD).No.962 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.962 of 2017

and

C.M.P(MD) No.10091 of 2017

The Branch Manager,
The Oriental Insurance Company Limited,
6-A, North Cotton Road,
Thoothukudi.

... Appellant/4th Respondent

-vs-

1. Ponraj

... 1st Respondent/Petitioner

2. T.Mathimaran

3. The Branch Manager,
New India Assurance Company Limited,
182/22/L.S.N.High Road,
Tirunelveli – 1

4. Sam Manokar

... Respondents 2 to 4/
Respondents 1 to 3

(Respondents 2 and 4 remained
ex parte before the lower Court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.103 of 2009, dated 06.03.2012, on the file of the Additional Motor Accident Claims Tribunal -cum-Additional Sub Judge, Tenkasi.



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For Appellant : Mr.C.Jawahar Ravindran

For R-3 : Mr.A.Ilango

For R1, R2, & R4 : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Oriental Insurance Company, challenging the award passed in M.C.O.P.No.103 of 2009, on the file of the Additional Motor Accident Claims Tribunal -cum-Additional Sub Judge, Tenkasi, primarily, on the ground that the Tribunal has not fixed the contributory negligence on the part of the claimant.

2. The injured claimant is a lorry driver. On 19.12.2007, while he was driving the lorry from west to east direction, another lorry owned by the third respondent and insured with the appellant/Insurance Company came from the opposite direction and dashed against the lorry which was driven by the injured claimant. The claimant has contended that he was 31 years old and he was earning a sum of Rs.10,000/- per month. He further contended that he has sustained grievous injuries and prayed for compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).



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3. The Insurer of the Lorry that was driven by the claimant had filed a counter contending that the accident has occurred on the middle of the road and as such drivers of both the vehicles are responsible for the accident.

4. The fourth respondent in the claim petition, namely, the appellant/ Insurance Company had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the claimant himself and therefore, they are not liable to pay any compensation. Merely because, a criminal case was registered as against the driver of the third respondent, it cannot be contended that they are liable to pay the compensation.

5. The Tribunal, after considering the F.I.R and the Motor Vehicle Inspectors Report of both the vehicles, has arrived at a finding that the accident had taken place only due to the rash and negligent driving on the part of the driver of the third respondent and has proceeded to mulct the entire liability upon the appellant/Insurance Company. Challenging the same, the present appeal has been filed by the appellant/Oriental Insurance Company Limited.



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6. According to the learned counsel appearing for the appellant, even the second respondent who is the insurer of the lorry driven by the claimant had filed a counter wherein it has been categorically pointed out that the accident has taken place only due to the rash and negligent driving on the part of the driver of both the vehicles. In such circumstances, the Tribunal was not right in mulcting the entire liability upon the appellant/Insurance Company. After the accident, the lorry driven by the claimant had capsized on the northern side and without considering the same, the Tribunal has arrived at a finding that the negligence was on the part of the driver of both the vehicles. Hence, he prayed for allowing this appeal and to fix the contributory negligence on the part of the claimant.

7. Though the claimant has been served and his name also has been printed in the cause list, he has not chosen to appear either in person or through his counsel.



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8. The learned counsel appearing for the third respondent/New India Assurance Company Limited, who is the insurer of the lorry, which was driven by the claimant had contended that the accident had taken place on the northern side of the road and therefore, the Tribunal has rightly mulcted the entire liability upon the appellant/Insurance Company and he prayed for sustaining the award passed by the Tribunal.

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

10. A perusal of the Motor Vehicle Report of both the vehicles, which is marked as Ex.P.3, will clearly indicate that both the vehicles have been extremely damaged in the middle portion and the cabin has also been damaged in both the vehicles. Therefore, it is clear that it is a case of head on collision. The claimant by lodging FIR under Ex.P.1 has contended that after the accident the vehicle got capsized on the northern side of the road. He had reiterated the same, during the chief examination. However, there is no cross examination on the side of the appellant/Insurance Company with regard to the said fact. Therefore, it is clear that the lorry driven by the claimant was on



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the middle of the road and therefore, the claimant has also contributed in the accident. In such circumstances, the Tribunal was not right in mulcting the entire liability upon the appellant/Insurance Company. Considering the above said facts, this Court is of the opinion that 30% of contributory negligence should be attributed to the claimant.

11. The Tribunal has awarded a sum of Rs.11,63,200/- as compensation. This Court does not find any reason to interfere in the quantum of compensation.

12. Therefore, after deducting the 30% of contributory negligence, the claimant is entitled to receive a compensation at Rs.8,14,240/-. The award of the Tribunal is reduced from Rs.11,63,200/- to Rs.8,14,240/- (Rupees Eight Lakhs Fourteen Thousand Two Hundred and Forty only). The award amount shall carry interest at the rate of 7.5% per annum from the date of claim petition excluding the default period if any. The award amount shall be deposited by the appellant/Insurance Company, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same by filing necessary petition before the Tribunal. Excess amount, if any, deposited



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by the appellant/ Insurance Company, shall be refunded to them along with accrued interest.

13. Accordingly, 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 stands closed.

12.07.2024

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

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



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R.VIJAYAKUMAR,J.

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