



CMA.(MD)No.784 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No. 784 of 2022

The Regional Manager,
National Insurance Company Ltd.,
Manojiappa Veethi,
Thanjavur.

: Appellant/2nd Respondent

Vs.

1.Kuthus @ Abdul Kuthus : 1st Respondent/Petitioner
2.M.Mohammed Yasin : 2nd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment, dated 21/04/2017 made in MCOP No.1047 of 2016 on the file of the Special District Judge, Thanjavur.

For Appellant : Mr.A.Ilango

For 1st Respondent : No appearance

For 2nd Respondent : Mr.T.Muthukrishnan

O R D E R

This Civil Miscellaneous Appeal is filed seeking to set aside the judgment and decree, dated 21/04/2017 passed in MCOP No.1047 of 2016 by the Special District Judge, Thanjavur.



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2. The facts in brief:-

On 13/08/2016 at about 07.30 pm, the petitioner was walking at Thiruvudacherry from north-south direction. At that time, the first respondent's vehicle driver drove the vehicle bearing registration No.TN-49-AR-0511 in a rash and negligent manner and dashed against the petitioner. He sustained grievous injuries. Claiming compensation of Rs.15,00,000/-, the above said petition is filed.

3.That was resisted by the appellant stating that the occurrence took place due to the carelessness on the part of the petitioner. He suddenly crossed the road and invited the accident. So, he is not entitled for any relief.

4.On the side of the claimant, 2 witnesses were examined and 7 documents marked. On the side of the Insurance Company, one witness was examined and 4 documents marked. Apart from that on the side of the Insurance Company, Ex.X1 to Ex3 were marked through RW2.

5.At the conclusion of the enquiry, the Tribunal found that the occurrence took place due to the rash and negligent act on the part of the 1st respondent's vehicle driver. So it fixed the responsibility upon him. The



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total compensation amount was also calculated as per the settled proposition of law at Rs.2,13,000/-.

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6.Regarding the negligence portion, the Tribunal recorded a finding that there is no contra evidence on the side of the appellant to show that the occurrence took place only due to the sudden crossing of the claimant. Regarding the licence of the first respondent, it recorded a finding that he is not having any proper and valid driving licence.

7.Regarding the compensation, it assessed partial permanent disability at 41%. Various customary categories arrived at and finally fixed the compensation of Rs.2,13,000/- and directed the appellant Insurance Company to pay the compensation and then recover the same from the owner of the vehicle.

8.Against which, this Appeal is preferred by the Appellant Insurance Company.

9.Heard both sides.



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10.In the grounds, it has been stated that it is a collusive petition between the first respondent and the claimant; further grounds that during the course of investigation in Crime No.318 of 2016, the Investigating Officer has concluded that the vehicle bearing registration No.TN-49-AR-0511 is not involved in the occurrence. So according to the appellant, since it is a collusive petition and the vehicle of the first respondent has wrongly included, the award must be set aside.

11.Entire records have been called for and perused. Perusal of the counter filed by the appellant does not even remotely indicate that such a communication was received from the Investigating Officer in Crime No.317 of 2016. But on the contrary, the following averments are made in para 4 of the counter.

"4.This respondent submits that according to this respondent, on the date of accident (13.08.2016), the driver of the first respondent vehicle drove the vehicle slowly and cautiously taking into consideration of the same and traffic in that locality and at that



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point of time the petitioner, who was walking in the middle of the road casually in front of the first respondent's vehicle, without taking into consideration of the approaching vehicle, suddenly and unexpectedly crossed the road in a hurry to catch his friend on the other side. On seeing the petitioner the driver of the first respondent's vehicle gradually slowed down his vehicle and practically came to halt. But the petitioner got scared lost control over himself and fell in front of the vehicle and invited this accident."

12. So it is clearly admitted by the appellant that the occurrence really took place due to carelessness on the part of the claimant. Now it is too late for the appellant to put forth such a plea that the first respondent vehicle wrongly included.

13. When there is no evidence on record before the Tribunal, it cannot be taken as a ground in the appellate stage. Even before this court, except this ground no



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other document is produced by the appellant and in the absence of any such evidence on record, the ground on which the appeal is made regarding the very occurrence itself cannot be considered. So, this ground is rejected.

14.Coming to the negligent portion, the Tribunal has recorded a finding that it took place only due to the first respondent. Absolutely there is no contra evidence on the side of the respondent to show that due to sudden crossing the claimant, invited the accident. In the absence of evidence, that portion of the order requires no interference.

15.Regarding the compensation also, the Tribunal on the basis of the medical evidence and the documents produced assessed the disability at 41% as partial permanent disability. Since, it is supported by medical evidence, the Medical Officer has given opinion that on the right left, both tibia and fibula bones been fractured. He was operated and plates and screws have been inserted. There was shortening of left leg also. Movements are restricted in that injured portion. Totally, he arrived at the conclusion that there is 41% partial permanent disability. When there is a shorting of movement, then the assessment of the disability by the



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Doctor can be taken. For one percent of disability, the Tribunal fixed at Rs.3,000/-. The other customary amount were fixed, which are nominal in nature.

16.I find no reason to interfere into the quantum of compensation fixed by the Tribunal. So, I find that the award passed by the Tribunal is fair and just compensation.

17.In the result, this civil Miscellaneous Appeal is **dismissed**. No costs.

18/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
Special District Judge,
Thanjavur.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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