



CMA.No.328 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.328 of 2025

M.Thangadurai

... Appellant

Vs.

1.Rathanamma

2. The Branch Manager,
New India Assurance Co. Ltd.,
Bommachattra Branch,
KIADB Office,Osuri Main Road,
Industrial Area, Bangalore 560 099.

3. Jitha Joythesh

4. Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers, No.45 & 46,
White House Road,
Chennai 600 014.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against award passed by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Dharmapuri in MCOP No.1334 of 2014, dated 06.01.2024.



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For appellant : Mr.I.Muthusamy

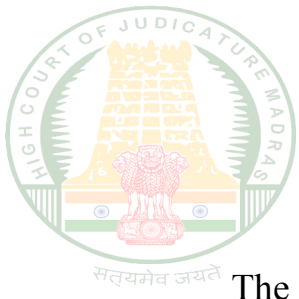
For Respondent : Mr.R.Rajesh for second respondent

JUDGMENT

The claimant in MCOP No.1334 of 2014 on the file of Chief Judicial Magistrate, Motor Accident Claims Tribunal, Dharmapuri is the appellant herein.

2. The Tribunal passed an Award, directing the respondents 3 and 4 to pay a sum of Rs.25,000/- under no fault liability, by fixing negligence on the claimant. Aggrieved by the same, the claimant has come before this court by filing the present appeal.

3. According to the claimant/appellant, on 01.03.2010, he was riding a two wheeler having registration No. TN 29 H 5184. When he was nearing fly over on Hosur Main Road, a vehicle owned by the first respondent came in the opposite direction in a rash and negligent manner and dashed against the two wheeler of the claimant. As a result of which, he suffered fracture in his right femur and right upper limb.



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The claimant was aged 32 years at the time of accident and he was engaged in the business of Hot chips and was earning a sum of Rs.25,000/- per month. Since the injuries suffered by the claimant affected his earnings, the claim petition was filed against the respondents. In the claim petition, there is no clarity in the pleading regarding identity of offending vehicle.

4. Originally, the claimant filed the claim petition as against the first and second respondent, viz owner of the Tata Ace bearing registration No. KA 51 0015 and its insurer. Subsequently, the third and fourth respondents, the owner and insurer of car bearing registration No.KA 03 ME 6674 were arrayed as parties.

5. The claim petition was opposed by the second and fourth respondents/ insurance companies by denying the manner of accident as claimed by the claimant/appellant and it was stated by them that the accident had occurred only due to the rash and negligent driving of the claimant. The first and third respondents remained exparte.



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6. Before Tribunal, the claimant was examined as PW1 and five documents were marked on his side as Ex.P1 to P5. On behalf of the fourth respondent, its manager was examined as RW1 and final report filed in the criminal case was marked as Ex.R1. Disability certificate issued by the Medical Board to the claimant was marked as Ex.C1.

7. The Tribunal after careful perusal of oral and material evidence, came to the conclusion that the accident had occurred only due to the negligent driving of the claimant himself and therefore, he is not entitled to claim any amount against the respondents in an application filed under Section 166 of Motor Vehicles Act. However, the Tribunal held that the claimant dashed against the car belonging to the third respondent, insured with the fourth respondent and consequently, directed the third and fourth respondents to pay a sum of Rs.25,000/- under no fault liability. Not satisfied with the award passed by the Tribunal, the claimant has come before this court.

8. The learned counsel for the appellant submits that the claimant was examined as PW1 and he clearly stated about the negligence on



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the part of the driver of the vehicle, owned by the third respondent, insured with the fourth respondent, however the said evidence was overlooked by the Tribunal. The learned counsel also submits that by inadvertence eye witness to the accident was not examined before the Tribunal by the claimant/appellant and hence an opportunity may be given to him to examine the eyewitness. If there was any eyewitness to the accident, he should have been examined by the claimant/appellant before the Tribunal. However, for the reason best known to him, at the time of enquiry before the Tribunal, the appellant has not chosen to examine any independent witness. Therefore, at this later point of time in the appeal proceedings, this court is not inclined to accept the request made by the learned counsel for the appellant that an opportunity shall be given to the claimant to examine the eyewitness.

9. The Tribunal scrutinized the evidence of PW1 carefully. Though PW1 in his chief examination has stated that the accident had occurred due to the rash and negligent driving of the driver of the vehicle, owned by the third respondent. The Tribunal pointed out that the claimant did not mention the correct number of the vehicle.



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Further, the claimant deposed as if the vehicle TATA Ace dashed against him as such, the accident had occurred. However, the vehicle owned by the third respondent is Maruthi Alto car. The claimant/PW1 during his cross examination deposed that a car had overtaken him and caused the accident. But in the chief examination, the claimant did not mention about the involvement of the car and he mentioned only about the involvement of the TATA Ace vehicle.

10. The third and fourth respondents have not been impleaded as parties at the time of filing of the claim petition. They have been impleaded only at a later point of time. The Tribunal clearly observed that in Ex.P1, First Information Report, the police registered a case against the claimant on the ground that he had driven his vehicle in a rash and negligent manner. Likewise, in Ex.R1 final report, it was clearly stated that the accident had occurred due to the rash and negligent driving of the claimant. Therefore, based on the evidence available on record, the Tribunal rightly came to the conclusion that the accident had occurred due to the rash and negligent driving of the claimant himself and hence, the claimant is entitled only to the



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minimum claim of Rs.25,000/- under no fault liability and the same need not be interfered with.

11. Accordingly, the civil miscellaneous appeal is dismissed and the Award passed by the Tribunal is upheld. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No
mst

To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dharmapuri



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S.SOUNTCHAR, J.

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