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C.M.A.No.2546 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2546 of 2021

Kandan

... Appellant

Vs.

1.MGM Anand

2.The Manager,
New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai – 1.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of the compensation amount and to fix the liability on the 2nd respondent insurance company in the award dated 28.09.2012 made in M.C.O.P.No.123 of 2007 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Tiruvallur.

For Appellant : Mr.Ranjith Kumaran
for M/s.R.Prabakar

For Respondents : Mr.M.Krishnamoorthy
for M/s.T.Bala Murugan [R2]



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JUDGMENT

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2. As per the claim petition, on 06.03.2006 at about 12.30 hours, when the petitioner was riding his TVS Victor motorcycle near TNEB officers colony, a Tata Sumo bearing Regn.No.TN-07-AY-9851 belonging to the 1st respondent, which was insured with the 2nd respondent, driven by its driver in a rash and negligent manner and hit against the petitioner's motorcycle and caused the accident. In the said accident, the petitioner sustained grievous injury and multiple fractures all over the body. Therefore, he filed a claim petition claiming a sum of Rs.7,00,000/- as compensation before the Tribunal in M.C.O.P.No.123 of 2007 for the injuries sustained by him in the said road accident.



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3. Before the Tribunal, the claimant examined himself as P.W.1, examined the doctor as P.W.2 and his employer as P.W.3 and marked 9 documents viz., Ex.P.1 to Ex.P.9. On the side of the respondents, they have examined 1 witness viz., R.W.1 and marked 1 document viz., Ex.R.1. After adjudication, the Tribunal partly allowed the petition and awarded a sum of Rs.2,90,000/- as compensation to the claimant, directing the 1st respondent to pay the compensation to the claimant. Aggrieved by the same, the claimant had preferred the present appeal.

4. Learned counsel appearing for the appellant submitted that the appellant had filed the claiming petition claiming a sum of Rs.7,00,000/- as compensation, however, the Tribunal awarded a sum of Rs.2,90,000/-, which is on the lower side and the same requires to be re-considered by this Court. Further, he submitted that, in the light of Ex.P.1 and based on the evidence of R.W.1, the Tribunal concluded that the accident occurred due to the negligent driving of the driver of the offending vehicle and fastened the entire liability on the part of the 1st respondent, discharging the 2nd respondent from paying the compensation, which is wholly unsustainable



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for the simple reason that the 2nd respondent did not examine any eye-witness before the Tribunal and did not raise any dispute regarding liability.

In such circumstances, discharging the 2nd respondent from paying the compensation is perverse and the same requires interference at the hands of this Court. Accordingly, he prays for appropriate orders.

5. Per contra, learned counsel appearing for the 2nd respondent/ Insurance Company contended that, though there is not much discussion regarding the negligence aspect, however, the 2nd respondent examined R.W.1 and through him, marked Ex.R.1/Investigation report stating that the FIR lodged by the petitioner is closed as mistake of fact. Thereby, the Tribunal fastened the entire liability on the part of the 1st respondent, which is wholly sustainable and the same does not require any interference. Further, he submitted that the compensation awarded by the Tribunal is already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for the dismissal of this appeal.



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6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The main issue that arises for consideration in this appeal is whether the Tribunal is right in directing the 1st respondent to pay the entire compensation to the appellant or not ?

8. Admittedly, Ex.P.1/FIR has been registered by the law enforcing agency against the driver of the 1st respondent's vehicle. A perusal of Ex.R.1/Investigation report reveals that subsequent to the registration of FIR, the law enforcing agency has closed the case as mistake of fact, which does not mean that the 2nd respondent can be discharged if at all the benefit goes only to the owner of the offending vehicle. In the present case, the appellant examined three witnesses viz., P.W.1 to P.W.3 to prove his case, however, in order to disprove the same, no independent eye-witness has been examined either by the 1st respondent or by the 2nd respondent. In the



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absence of any eye-witness, discharging the 2nd respondent from paying the compensation is perverse, illegal and arbitrary. Hence, this Court is of the view that, at the time of accident, there was a valid insurance policy for the offending vehicle, thereby, as the insurer of that vehicle, the 2nd respondent is liable to pay the compensation to the appellant.

9. In respect of quantum of compensation awarded by the Tribunal, this Court perused the disability certificate/Ex.P.2 issued by the doctor/P.W.2, which reveals that the appellant had suffered 65% disability. Even by fixing a sum of Rs.2,000/- per percentage of disability, a sum of Rs.1,30,000/- ought to have been awarded towards loss of income. Further, the compensation awarded by this Court under the other heads and the compensation awarded towards temporary loss of income during the treatment period would amount to around Rs.3,00,000/-. Hence, this Court is of the view that the compensation of Rs.2,90,000/- awarded by the Tribunal is just and reasonable and the same is liable to be confirmed.



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10. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the impugned Award of the Tribunal is confirmed. The second respondent-Insurance Company is directed to deposit the compensation awarded by the Tribunal to the credit of M.C.O.P.No.123 of 2007 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter. It is made clear that the appellant/claimant will not be entitled to any interest for the delay period. No costs.

29.01.2025

Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

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To

The Motor Accident Claim Tribunal/Chief Judicial Magistrate, Tiruvallur.



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M.DHANDAPANI,J.,

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