



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.1334 of 2013

and

MP(MD)No.1 of 2013

The Branch Manager,
The Oriental Insurance Company Limited,
Divisional Office,
Railway Station Opposite,
Railway Station Road,
Palakadu, Kerala State

: Appellant/2nd respondent

Vs.

1.Subramanian @ Moorthy
2.P.Muthukumar

: 1st respondent/Petitioner
: 2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in MCOP No.132 of 2009, dated 30.01.2013 on the file of the Motor Accidents Claims Tribunal-cum-Additional Sub Judge, Tenkasi.

For Appellant : Mr.K.Bhaskaran

For 1st respondent : Mr.D.Srinivasaragavan

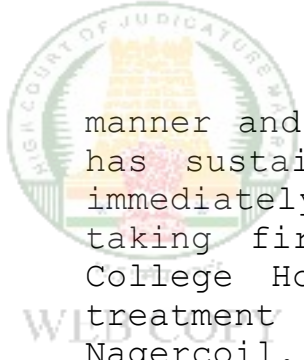
For 2nd respondent : No appearance

JUDGMENT

This appeal arises out of the award passed by the Motor Accidents Claims Tribunal (Additional Subordinate Judge), Tenkasi, in MCOP No.132 of 2009, dated 30.01.2013.

2.Heard the rival submissions and perused the materials available on record.

3.MCOP No.132 of 2009 was filed by the first respondent herein seeking compensation of Rs.10,00,000/- for the injuries sustained in the motor vehicle accident on 28.09.2008. The case of the claimant is that on the date of the accident, he was riding the motor cycle bearing registration No.TN-76-B-2274 and one Jothi Services, Kottur, was travelling as a pillion rider and they were proceeding on Tenkasi-Madurai Main Road. When they reached Krishnapuram Mupidathiamman Kovil, a TATA Ace Auto came in a rash and negligent



manner and rammed the motor cycle. In the accident, the claimant has sustained grievous injuries all over the body and he was immediately taken to Kadayanallur Government Hospital and after taking first aid, he was referred to the Tirunelveli Medical College Hospital for better treatment and thereafter, he took treatment in a private hospital called 'Susurusha Hospital' at Nagercoil.

4.The appellant resisted the claim by contending that the driver of the TATA Ace Auto had no driving licence at the relevant point of time, so, the Insurance company is not liable to pay any compensation and prayed for the dismissal of the petition.

5.Before the tribunal, the claimant examined himself as PW1 and one another witness as PW2 and marked Ex.P1 First Information Report, Ex.P2 Wound Certificate, Ex.P3 Report of the Motor Vehicles Inspector, Ex.P5 Report of the Motor Vehicles Inspector for the Auto. The appellant examined one Veeramanohar as RW1 and marked Ex.R1 rough sketch. Ex.R2 the Insurance policy for the Auto and Ex.R3 copy of the letter sent to the 2nd respondent, the owner of the offending vehicle. The tribunal, after analysing the evidences, both oral and documentary, held that the driver of the TATA Ace Auto, caused the accident and he was not having a valid driving licence.

6.PW2 has deposed that the claimant has sustained 65% permanent disability. Ex.P7 is the disability certificate. Exs.P6 and P8 are X-rays. However, the tribunal assessed the disability at 60% and awarded Rs.1,20,000/- under the head. In addition, the tribunal has awarded Rs.22,500/- for loss of income; Rs.30,000/- for pain and sufferings; Rs.9,000/- for extra nourishment; Rs.6,000/- for transportation and Rs.3,000/- towards attendant charges. In total, the Tribunal has awarded Rs.1,90,500/- together with interest @ 7.5% p.a.

7.Indisputably, the claimant is a thirty party. The Tribunal having found that there is a violation of the policy condition, rightly directed the appellant Insurance company to pay the award amount and then recover the same from the owner of the vehicle. This court is of the considered view that the award of the Tribunal is fair and reasonable and the direction to the appellant Insurance Company to pay and recover the award amount from the owner of the vehicle is in consonance with the settled position of law.

8.In the result, this appeal is dismissed. The appellant Insurance Company is directed to deposit the entire amount together with interest, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit, the claimant is permitted to withdraw the entire amount and file any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the owner of the vehicle as per the direction of the



Tribunal, by following the mode in Nanjappan's case [(2004)13 SCC 224]. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To,

The Additional Subordinate Judge (Motor Accident Claims Tribunal)
Tenkasi.

+One cc to Mr.K.Bhaskaran, Advocate, SR.No.37770

+One cc to M/s.D.Srinivasaragavan, Advocate, SR.No.38190

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RL/4C/3P/SKS/RR/15.12.2016

Judgment made in
CMA (MD) No.1334 of 2013

19.07.2016