BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2016

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD) No.2010 of 2013
and
MP(MD)No.4 of 2013

Branch Manager,
The Oriental Insurance Company Ltd.,
Gopalrav Library Building,
Townhall Road,
Kumbakonam Town & Munsiff. : Appellant/2nd respondent

Vs

1.Rasu : 1st respondent/Petitioner
2.Rajini : 2nd respondent/1st respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the decree and judgment made in MCOP No.642 of 2010, dated 28.02.2012 on the file of the Motor Accidents Claims Tribunal-cum-Additional District & Sessions Judge (Essential Commodities Act) Special Judge, Thanjavur.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.D.Veerasekaran
For 2nd respondent : No Appearance

JUDGMENT

Aggrieved over the award of the Motor Accidents Claims Tribunal (Additional District & Sessions Judge (Essential Commodities Act), Thanjavur, passed in MCOP No.642 of 2010, dated 28.02.2012, this appeal is preferred by the appellant Insurance company.

2.The case of the claimant is that on 07.07.2009 at about 10.30 pm, when he was going to his house by foot, a Two wheeler Bajaj Pulsor bearing Registration No.TN-49-AD-2587 driven by its driver in a rash and negligent manner dashed against the him. In the accident, he sustained fracture on the left leg and immediately he was taken to Thanjavur Medical College Hospital and admitted as inpatient for two days and thereafter, he took treatment at Anu Hospital, Thanjavur. A criminal case was registered against the rider of the motor cycle by the

Kollaperambur Police, in Crime No.58 of 2009 under Sections 279 and 337 IPC. He claimed compensation of Rs.6,00,000/- alleging that the accident was caused by the rider of the motor cycle.

3.The appellant, who was arrayed as the 2nd respondent resisted the claim petition by filing a counter, disputing the manner of the accident, age, income and occupation of the claimant and their liability to pay the compensation.

4.Before the tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and marked documents Exs.P1 to P7. On the side of the Insurance Company, one witness was examined as RW1 and no document was produced.

5.Heard both sides and perused the materials available on record.

6.In order to prove his claim, the claimant examined himself as Pw1 and deposed the manner of accident in tune with the allegations made in the claim petition. He marked Ex.P1 the first information report. Exs.P2 and P3 are the discharge summary. The tribunal based on the evidence of PW1 and Ex.P1 held that the rider of the motor cycle was responsible for the accident. The tribunal, accepting the evidence of RW1, a Junior Assistant from the RTO office, Thanavjur held that the driver of the motor cycle was not having a valid driving licence.

7.Exs.P2 and P3 would reveal that the claimant was taking treatment as inpatient from 07.07.2009 till 08.09.2009 and he underwent surgery and a steel plate was unplanted. PW2 has deposed that the claimant has suffered 39% permanent disability.

8.Taking into consideration the period of treatment and nature of injuries, the tribunal has awarded Rs.50,000/- towards pain and suffers; Rs.20,000/- towards nutrition expenses, transportation charges and loss of income during the treatment period; Rs.78,000/- towards permanent disability, by applying Rs.2,000/- per Percentage. The tribunal has totally awarded Rs.1,48,000/- along with interest @ 7.5% p.a.

9.In the case on hand, admittedly, the claimant is a third party. The Tribunal, after considering the facts and circumstances of the case, in my view, has rightly directed the appellant Insurance company to pay the award amount and recover the same from the owner of the vehicle.

10.In such view of the matter, this court does not find any illegality or infirmity in the award passed by the Tribunal. In fine, the 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 without filing any formal petition before the Tribunal. The Appellant Insurance Company is at liberty to recover the award amount from the insured as per the law laid down by the Hon'ble Supreme Court in Nanjappan's case [(2004)13 SCC 224] cited supra. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To

The Additional District & Sessions Judge,
(Essential Commodities Act/Special Court,
Thanjavur.

+1CC to M/S.K.BHASKARAN, Advocate, SR.No. 34469

Judgment made in
CMA(MD)No.2010 of 2013
01.07.2016

er
AM/EM MPA/SAR-3/28.11.2016/3P/3C