IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.1434 of 2007
& M.P.No.1 of 2007

The Branch Manager,
The Oriental Insurance Company Limited,
25-C, Arunagiri Complex,
3rd Floor, Bye-Pass Road,
Hosur. ... Appellant/2nd Respondent

-vs-

1.Vediappan ..1st Respondent/Claimant

2.N.Banumathi ...2nd Respondent/1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 13.02.2006 made in M.C.O.P.No.723 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Krishnagiri.

For Appellant : Mr.M.Rajasekhar

For Respondent No.1 : Mr.V.R.Anna Gandhi

For Respondent No.2 : No Appearance

J U D G M E N T

The Insurance Company / second respondent in M.C.O.P.No.723 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Krishnagiri, is the appellant. The first respondent is the claimant has filed the petition claiming compensation of Rs.5,00,000/- for the injuries sustained by him in a motor accident on 18.01.2003. The second respondent is the owner of the offending vehicle. The Tribunal has awarded a total compensation of Rs.3,55,000/- with interest at the rate of 9% per annum.

2. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to the negligent act of the driver of the offending vehicle.

3. Challenging the quantum and liability to pay the compensation, the Insurance Company preferred the appeal.

4. The learned counsel appearing for the appellant would submit that the offending vehicle is a goods carriage [a van] and the claimant at the time of accident was a gratuitous passenger and that, therefore, the Insurance Company is not liable to pay the compensation, as the risk of gratuitous passenger was not covered by the Insurance Policy.

5. On 18.01.2003, the victim hired the van in question for the purpose of transporting vegetable to Bangalore market. He boarded the van and travelled in it towards his garden for loading the vegetable. On the way to his garden, the vehicle met with an accident. It was driven by one Venkatesan, in a rash and negligent manner and rammed a palmara tree, as a result of which, the victim sustained grievous injuries. It is not in dispute that the offending vehicle was insured with the appellant / Insurance Company.

6. The learned counsel appearing for the appellant would rely on the decision of the Hon'ble Supreme Court in UNITED INDIA INSURANCE CO. LTD. vs. SURESH K.K. [2008 ACJ 1741] wherein it has been held thus: "any person envisaged in Section 147(1) of Motor Vehicles Act, 1988 does not include any gratuitous passenger and Insurance Company is not liable". In the case at hand, the insured remained exparte. Admittedly, the victim was allowed to travel in the goods carriage and thereby, the insured has committed breach of policy conditions. The accident occurred on 18.01.2003. Therefore, the Insurance Company is liable to pay the award amount to the first respondent / claimant and thereafter, they can recover the award amount from the owner of the vehicle.

7. A perusal of records would show that in support of claim, the claimant marked only First Information Report [Ex.P.1]; Wound Certificate [Ex.P.2]; Insurance Policy [Ex.P.3]; and Disability Certificate [Ex.P.4]. There are materials to show that the claimant suffered 40% disability, as he suffered fractures. It is well settled that the Tribunal is to award just compensation, which is reasonable on the basis of materials made available before it. It has to take into account the inflation factor also. Bearing these principles in mind and the nature of injuries sustained by the claimant, I am inclined to reassess the compensation as detailed below:

Sl.No.	Heads	Calculation
1.	Permanent Disability [40%]	Rs.80,000.00
2.	Pain and Sufferings	Rs.30,000.00
3.	Extra-nourishment	Rs.10,000.00
4.	Transportation	Rs.5,000.00
5.	Loss of Income	Rs.10,000.00
6.	Medical Expenses	Rs.10,000.00
7.	Loss of Amenities	Rs.10,000.00
8.	Attendant Charges	Rs.10,000.00
9.	Future Medical Expenses	Rs.10,000.00
Total	Compensation Awarded	Rs.1,75,000.00

8. In the result, the Civil Miscellaneous Appeal is allowed in part to the extent as mentioned above. The award amount is payable by the insurer. The Insurance Company is to recover the compensation amount by filing Execution Petition from the owner of the offending vehicle. Since the appellant / Insurance Company had deposited the award amount of Rs.1,75,000/- with interest at the rate of 9% per annum and costs, less the statutory deposit, to the credit of M.C.O.P.No.723 of 2003 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Krishnagiri, the first respondent / claimant is permitted to withdraw the same with proportionate interest less the amount already withdrawn, if any, by making necessary application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sri
To

The Motor Accidents Claims Tribunal
(Sub-Court), Krishnagiri.

+1cc to M.Rajasekhar,Advocate sr.13344
+1cc to V.R.Anna Gandhi,Advocate sr.13433

C.M.A.No.1434 of 2007

ss(co)
ss(17/4/2017)