



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1110 of 2016

and

C.M.P. (MD) .No.10014 of 2016

The Oriental Insurance Company Limited,
Through its Branch Manager,
Branch Officer,
56-4, Maranayanar Street,
106, M.M.Mahal,
Ilayankudi Town,
Sivagangai District.

... Appellant/2nd Respondent

Vs.

1.Y.Kulandaisamy
2.V.Mathiyalagan

... 1st Respondent/1st Petitioner
... 2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 27.05.2016, made in M.C.O.P..No.138 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Sivagangai.

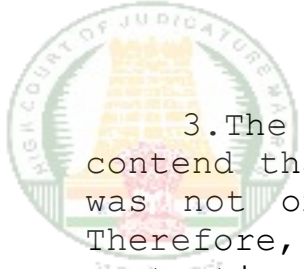
For Appellant : Mr.C.Ramachandran

For Respondents : No Appearance for R1 and R2

JUDGMENT

Heard the learned counsel appearing for the appellant.

2.The insurer has filed this appeal questioning the impugned award both on the ground of quantum as well as liability. The claimant namely, Kulanthaisamy was a load man. The vehicle in question is a lorry insured with the appellant herein. During the course of his employment, he suffered serious spinal fracture on 02.06.2014. FIR was given two weeks later. It was however referred as a mistake of fact. But the Tribunal passed an award dated 27.05.2016 awarding a sum of Rs.4,13,000/- to the claimant. Questioning the same, the insurer had filed this appeal.



3.The learned counsel appearing for the appellant would contend that the vehicle was placed in a stationary position. It was not on the move. Thus there was no use of the vehicle. Therefore, the claim petition is not maintainable is his contention. I am not in a position to accept the same. The claimant in this case is an injured load man and therefore he is very much covered by the terms of the policy. It is his choice to file either Workman Compensation Act or under the Motor Vehicles Act. Therefore, I am of the view that the insurer is liable to satisfy the claim of the workman.

4.Coming to the question of quantum, it is seen that the doctor has assessed the disability at 59%. The medical bill alone has come to Rs.1,73,353/-. It is a case of the spinal injury. I am of the view that the quantum awarded by the Tribunal cannot be said to be excessive by any standard. There is no merit in this appeal.

5.Therefore, the award dated 27.05.2016, made in M.C.O.P..No.138 of 2014 on the file of the Motor Accident Claims Tribunal, learned Chief Judicial Magistrate, Sivagangai is confirmed.

6.The appellant is directed to deposit the compensation amount of Rs.4,13,000/- with interest at the rate of 7.5% per annum with costs, from the date of petition till the date of realization, within a period of eight weeks from the date of receipt of a copy of this judgment less the amount already deposited, if any. On such deposit, the first respondent/claimant is entitled to withdraw the same, less the amount already withdrawn by him, if any, by filing proper application before the Tribunal.

7.This Civil Miscellaneous Appeal is therefore dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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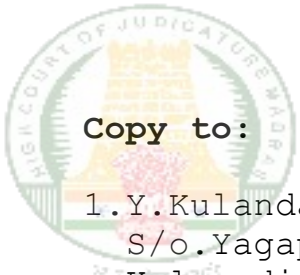
Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Sivagangai.

2. The Record Keeper, Vernacular Section,

<https://hcservices.ecourts.gov.in/hcservices/>
Madurai Bench of Madras High Court, Madurai.(2 copies)

**Copy to:**

1.Y.Kulandaisamy,
S/o.Yagappan,
Kalugadi,
Sethambal Post,
Sivagangai Taluk,
Sivagangai District.

2.V.Mathiyalagan,
S/o.Vellaichamy,
1-72, Sooranam, Sooranam Post,
Ilayankudi Taluk,
Sivagangai District.

+ 1 cc TO Mr.C.Ramachandran , Advocate in SR No. 93755

tsg

AE/JC/SAR4/13.06.2018/3P/7C

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