



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.12.2017
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A. (MD) No. 4 of 2014
and
M.P (MD) No.1 of 2014

The Divisional Manager,
National Insurance Company Ltd.,
3, North Veli Street,
Madurai.

... Appellant/ 2nd Respondent

Vs.

1.Dasan

... 1st Respondent/ Petitioner

2.K.Pushpanathan

... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 04.02.2008 made in M.C.O.P.No.233 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge), Fast Track Court), Ramanathapuram.

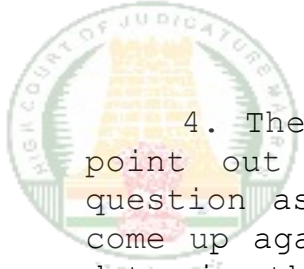
For Appellant	:	Mr.Athimoolapandian for Mr.A.K.Baskarapandian
For Respondents	:	Mr.S.Ramesh for Mr.V.Raghavachari(for R1) Mr.H.Velavadhas (for R2)

JUDGMENT

The insurer has filed this appeal questioning the impugned award on the ground of liability as well as quantum.

2. The claimant was a fisher man by avocation. He was a passenger in an auto. On 25.07.2005, when the car insured with the appellant hit the auto, the auto capsized. In the resultant accident, claimant suffered fracture on his left leg. He was an inpatient from 25.07.2005 to 09.08.2005. Iron Plate has been implanted in his left leg. He has not been able to pursue his avocation as a fisher man. It is a case of functional disability. The doctor assessed his disability as 42%. The Tribunal, considering all these circumstances, awarded a sum of Rs.3,00,000/- as compensation. By no stretch of imagination can this be said to be excessive. The quantum of compensation has been correctly arrived at by the Tribunal.

3. The learned counsel appearing for the appellant would contend that the insured vehicle was driven by the person, who was having only Light Motor Vehicle license and not an endorsement to drive the heavy motor vehicle. But this issue has already been decided by the Hon'ble Supreme Court in the decision reported in 2017 (2) TN MAC 145 (SC) Mukund Dewangan v. Oriental Insurance Company.



4. The learned counsel appearing for the appellant would further point out that the Hon'ble Supreme Court is now considering the question as to whether to make a reference or not. The issue is to come up again in the month on January 2018. But the position as on date is that the driver possessing an Light Motor Vehicle driving license is entitled to drive the transport vehicle also without any endorsement. Therefore, the plea of invoking the principle of pay and recover is not acceptable. I find no merit in this appeal. However, the interest rate awarded by the Tribunal must be reduced to 7.5% per annum.

5. Therefore, the appellant insurer and the second respondent are directed to deposit the entire amount of Rs.3,00,000/- jointly or severally with interest at the rate of 7.5% per annum and 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 by them, if any. On such deposit, the claimant is entitled to withdraw the entire compensation amount, less the amount already withdrawn by him, if any, by filing appropriate application. The appellant is permitted to withdraw the balance amount, if any.

6. The award dated 04.02.2008 made in M.C.O.P.No.233 of 2005 on the file of the Motor Accident Claims Tribunal, (Additional District and Sessions Judge), Fast Track Court), Ramanathapuram., is modified accordingly. This Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, M.P (MD) No.1 of 2014 is closed.

Sd/-

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
(Additional District and Sessions Court / Fast Track Court,
/Motor Accident Claims Tribunal,
Ramanathapuram.

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.V.Raghavachari, Advocate, SR.No.94425.

C.M.A(MD) No.4 of 2014

and

M.P (MD) No.1 of 2014

21.12.2017