

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.10.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No. 1282 of 2009

National Insurance Co. Ltd.
Mettur Branch,
No. 37/2E, Salem Main Road,
Mettur Dam, R.S. - 636 402.

..Appellant / 2nd Respondent

Vs

1.Saravanan ...1st Respondent / Petitioner

2.V.Raja Gounder ...2nd Respondent/1st Respondent

(2nd respondent ex parte in Lower Court.
Notice may be dispensed with)

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Tamil Nadu Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.5 of 2003, dated 28.02.2008 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Mettur.

For Appellant : Mr.N.Vijayaraghavan

For Respondent 1 : Mr.M.Hariharan
R2- Ex-parte

ORDER

The instant Appeal has been filed by the Insurance Company challenging the Award dated 28.02.2008 passed by the Motor Accident Claims Tribunal (Subordinate Court, Mettur) in MCOP.No.5 of 2003.

2. The brief facts leading to the filing of the instant appeal are as follows:

The first respondent sustained injuries as a result of an accident that took place on 08.05.2002 caused by a motor cycle bearing registration No.TN27-B-7677 owned by the second respondent and insured with the Appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal

seeking a compensation of Rs.2,00,000/-. The Motor Accident Claims Tribunal by its Award dated 28.02.2008 directed the Appellant to pay the first respondent a sum of Rs.25,710/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the Award dated 28.02.2008 passed in MCOP.No.5 of 2003, the instant appeal has been filed by the insurance Company.

4. Heard, Mr.N.Vijayaraghavan, learned counsel for the Appellant and Mr.M.Hariharan, learned counsel for the first respondent. The second respondent has remained ex parte both before the Tribunal as well as this Court.

5. According to the learned counsel for the Appellant, the only ground raised in the instant appeal is that there was a delay in registering the First Information Report against the driver of the insured vehicle. According to the learned counsel for the Appellant, the accident happened on 08.05.2002 but the First Information Report was registered only on 24.06.2002. Further the learned counsel for the Appellant would submit that the Appellant has given a complaint before the CB CID for the false claim made by the first respondent as seen from the evidence of RW1 and RW2 read with Exs.R1 to R3 but the learned counsel for the Appellant concedes that the status of the complaint given by the Appellant before the CB CID is unknown.

6. Per contra, learned counsel for the first respondent would submit that the claim made by the first respondent is a genuine claim. Further the learned counsel for the first respondent would submit that it is not in dispute that a motor accident caused injuries to the first respondent.

7. This Court after considering the materials available on record and after examining the impugned Award and after hearing the submissions of the respective counsels, observes the following:

a) Before the Tribunal, the first respondent has filed nine documents which were marked as Exs.A1 to A9 including FIR (EX.A1), Charge Sheet (Ex.A2) and Wound Certificate (Ex.A3).

b) It cannot be inferred that only due to the delay in registering the First Information Report, the claim is a false one. Further, the delay is not an enormous one. The onus is on the Insurance Company to establish before the Tribunal that the claim made by the first respondent is a false claim.

c) Even though, the Appellant has lodged a complaint with CB CID in the year 2002, till date, the status of the said complaint is unknown as conceded by the learned counsel for the Appellant.

d) Before the Tribunal, the injuries sustained by the first respondent as a result of an accident has not been disputed by the Appellant.

e) The Appellant has also not questioned in this Appeal the quantum of compensation awarded to the first respondent under the impugned Award.

f) The Charge sheet has also been filed by the police, subsequent to the registration of FIR which was marked as Ex.A3 which confirms that only due to the rash and negligent driving by the driver of the insured vehicle, the accident had happened, resulting in injuries sustained by the first respondent.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant Appeal. Accordingly the Appeal is dismissed without costs.

9. The Appellant is directed to deposit the amount awarded by the Tribunal, after deducting the amount already deposited, together with interest, to the credit of MCOP.No.5 of 2003 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mettur, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the first respondent is permitted to withdraw the amount along with accrued interest lying to the credit of MCOP.No.5 of 2003 by filing an appropriate application.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Subordinate Court, Mettur.

copy to: The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.M.Hariharan, Advocate, S.R.No.75099

C.M.A.No. 1282 of 2009

PPA(CO)
SSM(21/02/2019)