

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3049 of 2009

&

M.P.No.1 of 2009

National Insurance Co. Ltd.,
Divisional Office-1, LRN Colony,
Sharadha College Road, Salem-7

.. Appellant/2nd Respondent

..Vs..

1.Arumugam
2.R.Kumar

..Respondents-R1/Petitioner No.2/R1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree of the Learned Motor Accidents Claims Tribunal (Principal Sub-Judge) at Salem in MCOP.No. 351 of 2006 dated 20.04.2009.

For Appellant : Mr.K.Padmanabhan

R1 : Died

R2 : Served - NA

J U D G M E N T

The instant appeal has been filed by the insurance company challenging the Award dated 20.04.2009 passed in Motor Accidents Claims Tribunal (Principal Sub-Judge) at Salem in M.C.O.P.No.351 of 2006.

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

2. The first respondent sustained injuries as a result of an accident that took place on 21.03.2006, caused by a vehicle Goods Auto bearing Registration No.TN-30-D-0949 owned by the second respondent and insured with the Appellant. The first respondent preferred a compensation claim before the Motor Accident Claims Tribunal in M.C.O.P.No.351 of 2006 seeking a compensation of Rs.2,00,000/- for the injuries sustained by him as a result of the accident. The Motor Accident Claims Tribunal by its Award dated 20.04.2009 in M.C.O.P.No.351 of 2006 directed

the Appellant to pay the first respondent a sum of Rs.42,400/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

3. Aggrieved by the Award dated 20.04.2009 in M.C.O.P.No.351 of 2006, the instant appeal has been filed by the insurance company.

4. Heard Mr.K.Padmanabhan learned counsel for the Appellant. There is no representation on the side of the respondents. Notice sent to the first respondent by the Registry of this Court has been returned with an endorsement that the first respondent is dead. Notice has been duly served on the second respondent and his name has also been printed in the cause list today. Since this Court is going to confirm the award, there is no necessity to bring the legal representatives on record for the first respondent, who was died subsequent to the passing of the Award dated 20.04.2009.

5. According to the learned counsel for the Appellant, the quantum of compensation awarded to the first respondent is not in accordance with the settled principles of law as laid down in the various decisions of this Court as well as the Hon'ble Supreme Court. According to the learned counsel for the Appellant, the injuries sustained by the first respondent have not been proved by the first respondent before the Tribunal.

6. This Court, after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the learned counsel for the Appellant, observes the following:

a) In view of the policy violation committed by the owner of the vehicle namely the second respondent, under the impugned award, the Tribunal has directed the Appellant to pay the first respondent the compensation amount and recover the same from the second respondent.

b) The Injuries sustained by the first respondent as a result of the accident have not been disputed.

c) The age of the first respondent as well as his avocation, at the time of the accident has also not been disputed by the Appellant before the Tribunal.

7. 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. Consequently connected miscellaneous petition is closed.

8. The Appellant is permitted to recover the amount paid to the first respondent by following the method of recovery as laid down by the Hon'ble Supreme Court in the case of Manju Devi vs. Musafir Paswan reported in 2004 (2) TN MAC 262 (SC) : 2005 (4) ACJ 15 and the relevant portion of the said Judgment reads as

follows:

"For the purpose of recovering the Compensation amount from the insured, the Insurer shall not be required to file a Suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the Insurer and the insured was the subject matter of determination before the Tribunal and as if the issue is decided against the owner and in favour of the Insurer. A notice shall be issued to the insured to furnish security for the entire amount. The offending vehicle shall be attached as a part of the security. If necessity arises, the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate order in accordance with law as to the manner in which the insured/Owner of the vehicle shall make payment to the insurer. In case there is any default, it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property of the insured".

Sd/-

Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

kyl/nl
To
The Motor Accident Claims
Tribunal (principal Sub Judge)
Salem.

Copy To:
The Section Officer, VR Section, High Court, Madras.

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GMV (15/10/2018)