



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

CORAM :

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.722 of 2018

and

C.M.P. (MD) No.8207 of 2018

M/s.National Insurance Co. Ltd.,
Through its Branch Manager,
92, Devarpuram Road,
Tuticorin.

... Appellant/2nd Respondent
vs.

1) Raja Singh, S/o.Gnanamuthu ... Respondent/Petitioner

2) Dharmaraj, S/o.Devaraja ... Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 11.06.2010, passed in M.C.O.P.No.1241 of 2006, by the learned Additional District and Sessions Judge/Fast Track Court No.1, Motor Accident Claims Tribunal, Tirunelveli.

For Appellant : M/s.P.Malini

For Respondents : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree dated 11.06.2010, passed in M.C.O.P.No.1241 of 2006, by the learned Additional District and Sessions Judge/Fast Track Court No.1, Motor Accident Claims Tribunal, Tirunelveli.

2.The appellant is the Insurance Company. The first respondent is the claimant, whereas the second respondent is the owner of the mini bus, bearing registration No.TN-69-X-4699, which was insured with the appellant Insurance Company and involved in the accident.

3.The case of the first respondent/claimant is that on 20.07.2006 at 9.15 a.m., he was travelling in a mini bus belonging to the second respondent from Sathankulam to Tisayanvillai. When the bus was proceeding on Sathankulam to Tisayanvillai Main Road, due to rash and negligent driving by the driver of the second respondent, the bus lost its control and capsized. Due to the said impact, the first respondent/claimant sustained multiple injuries all over the body. Contending that due to the injuries sustained in



the accident, he was not able to do his avocation as done prior to the accident, the first respondent claimed a sum of Rs.3,00,000/-, as compensation.

4.The appellant Insurance Company filed counter statement denying the various averments made by the first respondent/claimant.

5.Before the Tribunal, the first respondent/claimant examined himself as P.W.1 and marked 7 documents as Exs.P1 to P7. One Muthu Madasamy, Administrative Officer and Ravi Selvi, Junior Assistant were examined as R.W.1 and R.W.2 and twelve documents were marked as Exs.R1 to R12.

6.The Tribunal considering the pleadings, oral and documentary evidence and arguments, held that the accident occurred due to rash and negligent driving by the driver of the second respondent and awarded compensation of Rs.16,750/- with interest at 7.5% p.a. from the date of claim petition till the date of realisation and directed the appellant Insurance Company to pay the said compensation amount at the first instance and recover the same from the owner of the vehicle viz., the second respondent.

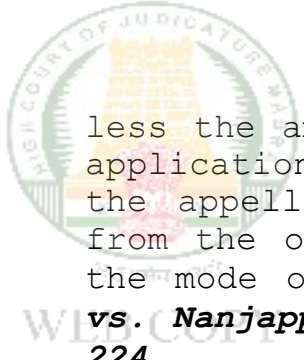
7.Against the said award dated 11.06.2010, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

8.The learned counsel appearing for the appellant contended that the driver of the second respondent drove the vehicle without licence and therefore, the Tribunal ought to have exonerated the appellant from paying the compensation amount to the first respondent/claimant. The first respondent/claimant was never admitted in the Hospital and the first respondent was awarded loss of income without evidence.

9.I have heard the learned counsel appearing for the appellant and perused the materials available on record.

10.Though the driver of the vehicle had valid driving licence, the same had expired 50 days before the accident. Hence, the Tribunal ordered pay and recovery following the decisions of the Hon'ble Apex Court. Further, based on the evidence available on record, the Tribunal has awarded only a meager sum of Rs.16,750/- as compensation to the first respondent/claimant, which does not warrant any interference by this Court. Hence, this Civil Miscellaneous Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.The appellant Insurance Company is directed to deposit the entire award amount with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount, if any, already deposited. On such deposit, the first respondent/claimant is entitled to withdraw the said amount,



less the amount, if any, already withdrawn, after filing necessary application before the Tribunal. After depositing the award amount, the appellant Insurance Company is permitted to recover the same from the owner of the vehicle, viz., the second respondent as per the mode of recovery incorporated in ***Oriental Insurance Co. Ltd., vs. Nanjappan and others*** reported in ***(2004) 13 Supreme Court Cases 224.***

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Additional District and Sessions Judge/
Fast Track Court No.1,
Motor Accident Claims Tribunal,
Tirunelveli.
2. The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.Malini, Advocate Sr.No.81819

SMN2

VB/PM/SAR2/31.12.2018/3P/5C

CMA(MD) No.722 of 2018
30.08.2018