WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2018
CORAM:
THE HONOURABLE MS.JUSTICE V.M. VELUMANI
CMA(MD).No.750 of 2018
and
CMP(MD).No.8582 of 2018

The New India Assurance Company Limited,
Rep. by its Branch Manager,
No.674, Periyakulam Road,
Theni : Appellant / Respondent 2

Vs.

1.Minor. K. Sakthi Kaviya
(minors rep. by her father
viz., K.Karuppudurai) : 1st Respondent / Petitioner

2.S.N.Subburaj : 2nd Respondent / R1

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree, dated 27.10.2017, made in MCOP.No.35 of 2010, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Theni.

For Appellant : Mr. J.S. Murali

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Award, dated 27.10.2017, made in MCOP.No.35 of 2010, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Theni.

2. The appellant is the second respondent in MCOP.No.35 of 2010, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Theni. The first respondent / claimant has filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation, for the injuries sustained by her in the accident, that occurred on 24.05.2010.

3. According to the first respondent, while she was walking on the left side of the road, the bus belonging to the second respondent driven in a rash and negligent manner coming in the opposite direction dashed against the first respondent and caused accident. The first respondent sustained multiple injuries. The appellant is insurer of the bus and hence, the first respondent filed claim petition against the second respondent and appellant.

4. The second respondent remained ex parte before the Tribunal.

https://hcservices.ecourts.gov.in/hcservices/

5. The appellant filed counter statement and contended that the accident did not take place due to negligence of the driver of the of the bus. He further contended that the first respondent suddenly tried to cross the road and invited the accident. Further, the cheque issued by the second respondent in favour of the appellant for policy was dis-honoured. The policy issued was cancelled. On the date of accident, no policy was in existence. Hence, the appellant is not liable to pay any compensation. In any event, the compensation claimed by the first respondent under different heads are excessive.

6. The Tribunal considering the pleadings oral and documentary evidence let in by the parties held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the second respondent. Considering the nature of injuries as per the evidence of Doctor and documents filed by the first respondent the Tribunal awarded a total sum of Rs.2,28,030/- as compensation and directed the appellant to pay the compensation at the first instance and recover the same from the second respondent as the appellant proved that that Policy issued to the bus belonging to the second respondent was cancelled.

7. Against the said Award, the appellant has filed the present appeal.

8. The contention of the learned counsel appearing for the appellant that the Tribunal having held that the appellant has proved that the policy issued to the bus belonging to the second respondent was cancelled, erred in directing the appellant to pay the compensation at first instance and recover the same from the second respondent. He further stated that the Tribunal granted excess amount as compensation to the first respondent.

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

10. Before the Tribunal, the appellant has marked returned cheque, returned memo issued by the two Banks while returning the cheque and cancellation of policy issued to the second respondent. The appellant has not produced any evidence both oral and documentary to show that the appellant informed the second respondent about dishonour of cheque and cancellation of policy. The Tribunal failed to consider this aspect and erroneously held that the appellant proved the cancellation of policy. In view of the same, this Court is not inclined to interfere with the award amount awarded by the Tribunal.

11. In the result, this Civil Miscellaneous Appeal is dismissed, by confirming the Award dated 27.10.2017, made in MCOP.No.35 of 2010, on the file of the Motor Accidents Claims Tribunal / Subordinate Court, Theni. No costs. Consequently, connected Miscellaneous Petition is closed.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

12.The appellant / Insurance Company is directed to deposit the entire award amount together with interest, after deducting the amount already deposited if any, within a period six weeks from the date of receipt of a copy of this Judgment. Since the first respondent / claimant is a minor, the Motor Accidents Claims Tribunal / Subordinate Judge, Theni, is directed to deposit the said award amount in any one of the Nationalised Banks in re-investment scheme till she attains majority.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Motor Accidents Claims Tribunal
   Subordinate Judge, Theni,

2. The Record Keeper, VR Section,(2 COPIES)
   Madurai Bench of Madras High Court,Madurai.

+1cc to Mr.J.S. Murali, Advocate Sr.No.85511

TRP

VB/SKN/SAR1/17.12.2018/3P/5C

CMA(MD).No.750 of 2018 and
CMP(MD).No.8582 of 2018
19.09.2018

https://hcservices.ecourts.gov.in/hcservices/