IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1009 of 2012
and M.P.No.1 of 2012

M/s.National Insurance Co. Ltd.,
81-D, Chetty Street,
Opposite to Bus Stand,
Tiruchengode - 637 211,
Namakkal District. ...Appellant/2nd Respondent

vs.

1.Thiru.Kalidass ...1st Respondent/Claimant

2.Thiru.A.Periyasamy ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.No.655 of 2002 on 05.08.2011 on the file of the Learned Motor Accidents Claims Tribunal (Principal Subordinate - Judge) at Krishnagiri.

For Appellant : Mr.J.Chandran

For Respondents : R1 - Died

R2 - left

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 05.08.2011 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge), Krishnagiri in M.C.O.P.No.655 of 2002.

2.The Appellant Insurance Company has challenged the impugned Award on the ground that the quantum of compensation assessed by the Tribunal is excessive and they have also challenged on the ground that since the driver of the insured vehicle did not possess a driving license, they are not liable to compensate the claimant.

3.Heard Mr.J.Chandran, learned counsel for the Appellant. Since this Court is going to confirm the Award, the service of notice on the respondents is not required and is dispensed with.

4.The first respondent sustained injuries as a result of an accident caused by the insured vehicle. The nature of the injuries sustained by the first respondent has not been disputed by the Appellant before the Tribunal as seen from the materials and evidence available on record. Sufficient evidence has been placed by the first respondent before the Tribunal to substantiate his claim. Insofar as the contention of the Appellant that the Award for a sum of Rs.75,000/- together with interest and costs to the first respondent is excessive is concerned, this Court is not convinced with the said contention for the following reasons:

(a)Before the Tribunal, the first respondent has filed five documents which were marked as Exs.A1 to A5 and two witnesses were examined namely PW1, the first respondent himself and PW2, the Doctor who examined the first respondent. The documents filed by the first respondent before the Tribunal included the FIR, wound certificate, motor claim, disability certificate and x-ray. On the side of the Appellant, five documents were marked as Exs.B1 to B5 and one witness was examined on their side as RW1.

5.This Court has perused and examined the evidence available on record before the Tribunal.

6.In the considered view of this Court, the Tribunal has rightly assessed the compensation to the claimant based on the fact that due to the accident, the claimant's right hand 3rd ulna bone was malunited. The Tribunal has also observed that due to the injuries, the first respondent/claimant was finding difficulty to lift weight in his right hand and was unable to perform his work as before. The disability certificate which was marked as Ex.A4 also reveals that the first respondent/claimant suffered 35% permanent disability towards first respondent/claimant is discomforts. The first respondent was also aged 20 years at the time of the accident.

7.Considering all the above mentioned factors, the assessment of Rs.75,000/- by the Tribunal as compensation payable by the Appellant is a just compensation. Therefore, there is no scope for interference with regard to the quantum of compensation assessed by the Tribunal.

8.Insofar as, the second contention raised by the Appellant that the driver did not possess a driving license is concerned, the law is now well settled as laid down by various decisions of the Hon'ble Supreme Court as well as the High Courts. In case of not possessing driving license, which is a policy violation, the Insurance Company will have to necessarily pay the compensation and recover the same from the insured. The Tribunal has also applied the settled position of law and has granted pay and recovery rights to the Appellant. Therefore, the contention raised with regard to non-possessing of driving license by the driver of the insured vehicle in this appeal is unsustainable.

9.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

10.Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 6% from the date of the claim till the date of realization to the credit of M.C.O.P.No.655 of 2002 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle/second respondent. On such deposit being made, the claimant/first respondent is permitted to withdraw the Award amount by filing appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To
1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal, Krishnagiri.

2.The Section Officer,
Vernacular Section,
Madras High Court, Madras-104.

C.M.A.No.1009 of 2012

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srg 26/04/2021