IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2330 of 2011
and M.P.No.1 of 2011

(Through Video Conferencing)

The National Insurance Co., Ltd.,
Branch Office-1,
78, Thiruvenkidusamy Chetty Street,
Erode 638 001. ..Appellant/2nd Respondent

Vs.

1.V.Thirumoorthy ..1st Respondent/Claimant
2.P.Eswaran ..2nd Respondent/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree made in M.C.O.P.No.826 of 2006 dated 21.07.2010 on the file of the Motor Accident Claims Tribunal (Additional Sub Court) Tiruppur.

For Appellant : Mr.D.Bhaskaran
For R1 : No Appearance

J U D G M E N T

The Insurance Company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 21.07.2010 passed by the Motor Accidents Claims Tribunal, (Additional Sub Court) Tiruppur in M.C.O.P.No.826 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,08,500/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the 1st respondent/claimant. Aggrieved by the same, the appellant Insurance Company has been filed the present Civil Miscellaneous Appeal.

3. In this appeal, the appellant-Insurance Company has sought to assail the impugned Judgment and Decree on the ground that the Tribunal has not ordered pay and recovery from the 2nd respondent owner of the insured vehicle. The 2nd respondent has remained absent and set exparte before the Tribunal. It is specifically mentioned that the 2nd respondent has failed to

produce his licence before the Tribunal. That apart, it is submitted that Ex.R4 - copy of the notice sent through registered post to the 2nd respondent and served vide Ex.R.5 had not evoked any response from the 2nd respondent- owner-driver of the insured vehicle.

4. Though notice was sent to the 2nd respondent and vide Ex.R4 it was returned with an endorsement " insufficient address". It is submitted that since the 2nd respondent remained exparte, the Tribunal ought to have drawn an adverse amount against the 2nd respondent, as the 2nd respondent appeared to have shown scant regard. The Tribunal has fixed the liability on the appellant - Insurance Company.

5. The learned counsel for the first respondent submitted that the impugned Judgment and decree was well reasoned and requires no interference.

6. Though notice has been served on the 2nd respondent and his name has been printed in the cause list, there is no representation on behalf of 2nd respondent. Hence the case is taken up for hearing as it appears that the 2nd respondent is not interested in defending himself.

7. I have considered the arguments advanced by the learned counsel for the appellant-Insurance Company and the 1st respondent. I have also perused the evidence on record and the impugned Judgment and Decree.

8. In Column-6 of the M.V.I.Report , it is clearly mentioned that the 2nd respondent has failed to disclose the particulars of the licence. The accident was because of the 2nd respondent owner cum driver of the insured vehicle. I therefore find sufficient reasons for ordering pay and recovery.

9. The appellant Insurance Company is entitled to pay and recover the amount without filing any separate application as per the decision of the Hon'ble Supreme Court in Oriental Insurance Co. Ltd. Vs. Nanjappan and Others, (2004) 13 SCC 224.

10. As far as quantum of compensation is concerned, it is notice that the nature of injury suffered by the 1st respondent is grievous in nature and therefore the Tribunal has awarded a just compensation . Therefore, I do not find any reasons to interfere with the impugned Judgment and decree passed by the Tribunal.

11. It is represented by the learned counsel for the appellant Insurance Company that 50% of the award amount has already been deposited before the Tribunal. The submission of

the learned counsel for the appellant stands recorded. The appellant-Insurance company is directed to deposit the balance amount together with interest at 7.5% from the date of the claim petition till the date of deposit and cost, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

12. On such deposit, the 1st respondent/claimant is entitled to withdraw the same together with interest, by filing suitable application before the Tribunal.

13. The appellant-Insurance Company may proceed to recover the aforesaid amount of compensation from the 2nd respondent owner of the vehicle as per the above decision of the Hon'ble Supreme Court.

14. This Civil Miscellaneous Appeal stands partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accident Claims Tribunal
(Additional Sub Court) Tiruppur.

AKM/17.04.21/3P-2C/