

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2560 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

The National Insurance Company Limited,  
Represented by its Divisional Manager,  
having office at Officer's Line,  
Vellore. ... Appellant/2<sup>nd</sup> Respondent

Vs.

1. Unnamalai ... 1<sup>st</sup> Respondent/Claimant  
2. M.R.Thajutheen ... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and Decree in M.C.O.P.No.51 of 2004, dated 30.03.2009, on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Gudiyatham.

For Appellant : Mr.D.Bhaskaran

For Respondents : Not ready in notice

JUDGMENT

Though notice on the respondents has remained unserved and since no adverse orders are proposed to be passed against the respondents, this appeal is taken up for hearing and is disposed based on the submission of the learned counsel for the appellant.

2. The Insurance Company is the appellant in this appeal and is aggrieved by the impugned Judgment and Decree dated 30.03.2009 passed by the Motor Accidents Claims Tribunal (Subordinate Judge, Gudiyatham) in M.C.O.P.No.51 of 2004.

3. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,30,355/- together with interest at 6% per annum from the date of filing of the claim petition (12.01.2004) till the date of deposit (30.03.2009), to the 1<sup>st</sup> respondent/claimant.

4. The first respondent/claimant aged about 38 years at the time of accident on 11.12.2003 met with an accident, while travelling in the insured auto. The nature of injuries suffered by the first respondent/claimant are as follows:-

- (1) Abrasion of size 4x3 cm over tip of left shoulder
- (2) Abrasion of size 7x2 cm over tip of right shoulder
- (3) Stitched wound of size 3 cm over right wrist
- (4) Abrasion of size 2x2 cm over extensor aspect of left forearm
- (5) Fracture tip of right clavicle at right shoulder
- (6) Fracture of left superior public remi
- (7) Fracture of left 5<sup>th</sup> rib
- (8) Laceration of size 6x3x2 cm over right lobe of liver
- (9) Contusion right lung base

As per the Wound Certificate-Ex.P1, injury nos.5 to 9 are grievous injuries.

5. The Tribunal after considering the evidences on record has awarded the aforesaid compensation by fixing the permanent disability at 49% and further the amount towards pain and sufferings, mental agony and other heads.

6. Before the Tribunal, the appellant Insurance Company had taken a defence that the insured vehicle was a goods carriage and that more than 10 people travelled and due to the over loading, the driver could not control the vehicle, as a result of which, there was an accident resulting injury to the first respondent/claimant.

7. It is submitted that the compensation awarded to the first respondent/claimant was liable to be set aside as the first respondent/claimant travelled as an unauthorized passenger. It was further submitted that the claim of Rs.5,25,000/- was exaggerated claim and unrelated to the facts of the case.

8. It is noticed that the Tribunal has found that the appellant has not produced any documents to substantiate the defence before it. In this appeal also, there is nothing on record to infer that the second respondent had accommodated 15 persons in the insured vehicle. Therefore, there is no merit in the present appeal.

9. If the amount of compensation awarded by the Tribunal has not been deposited by the appellant Insurance Company, it is directed to deposit the same together with interest at 6% per annum from the date of filing of the claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of the copy of this Judgment.

10. On such deposit, the first respondent/claimant is entitled to withdraw her share together with interest as

directed by the Tribunal, by filing suitable application before Tribunal, if the award amount has not been already withdrawn by her as per the impugned Judgment and Decree.

11. With the above observation and direction, this Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:  
The Motor Accidents Claims Tribunal,  
Subordinate Judge, Gudiyatham.

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

C.M.A.No.2560 of 2011  
and  
M.P.No.1 of 2011

A.SK(19.01.2021)