

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.178 of 2014

and M.P.No.1 of 2014

M/s.United Insurance Company Limited,
Having office at
New Scheme Road,
Pollachi.

... Appellant/3rd Respondent

Vs

1.R.Jayaprakash

...Ist Respondent/Petitioner

2.Panjalingam

...IInd Respondent/Ist Respondent

3.M/s.Anamalais Engineering,

471, Dr. Nanjappa Road,

Coimbatore.

...III Respondent/II Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2012 in MCOP No.1603 of 2012 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) at Coimbatore.

For Appellant : Ms.R.Sree Vidhya

For Respondents: Mr.M.N.Balakrishnan for R1

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the Award dated 21.12.2012 passed by the Special Sub Judge, Coimbatore in MCOP No.1603 of 2012.

2.The brief facts leading to the filing of the instant appeal are as follows:-

(i)On 18.02.2010 when the first respondent was driving his vehicle Indica DLS car bearing Registration No.TN-41-W-3942 along with wife from Bharathi Nagar to drop her in RVS College Coimbatore - Trichy Main Road, a Town bus bearing Registration No.TN-38-AV-2860 belonging to the third respondent and insured with the Appellant came from behind and dashed against the first respondent's car due to the alleged rash and negligent driving by the driver of the Town bus. As a result of the accident, the first respondent's car namely Indica DLS car bearing Registration No.TN-41-W-3942 sustained damages.

(ii)The first respondent preferred a damage claim against the Appellant Insurance Company seeking compensation for the damage sustained by his car and for other reliefs on account of the damage caused to his vehicle on 18.02.2010 by the Town bus bearing Registration No.TN-38-AV-2860 insured with the Appellant.

(iii)The Motor Accident Claims Tribunal by its Award dated 21.12.2012 in M.C.O.P.No. 1603 of 2012, directed the Appellant to pay a sum of Rs.25,998/- together with interest and costs to the first respondent for the damages sustained by him and his vehicle as a result of the accident.

3.Aggrrieved by the quantum of compensation awarded by the Tribunal, this appeal has been filed by the Insurance Company.

4.Heard Ms.R.Sree Vidhya, learned Counsel for the Appellant and Mr.M.N.Balakrishnan, learned Counsel for the first respondent.

5.The only ground raised by the Appellant Insurance Company in this appeal is that the quantum of compensation awarded to the first respondent is excessive and it is also their contention that the first respondent has already been compensated by the insurer of his car, namely M/s.National Insurance Company Limited. According to them, having being compensated adequately by the first respondent Insurance Company namely M/s.National Insurance Company Limited, the first respondent cannot once again seek compensation from the Appellant Insurance Company, who is the insurer of the Town bus bearing Registration No.TN-38-AV-2860. Further, it is their case that the compensation awarded by the Tribunal under various heads including compensation for loss of use of car for 13 days and towards mental shock and agony is excessive.

6.The learned Counsel for the Appellant also drew the attention of this Court to Ex.R2 which was marked before the Tribunal which would reveal that a sum of Rs.10,333/- was paid to the first respondent by National Insurance Company Limited, the insurer for Indica DLS car for the same accident. She would submit that the first respondent has claimed compensation from the Appellant Insurance Company despite having received a substantial sum from his own insurer namely National Insurance Company Limited. According to the learned counsel for the Appellant, despite a categorical stand having been taken in the counter statement filed before the Tribunal, the Tribunal failed to consider the same and has awarded the compensation to the first respondent.

7.The learned Counsel for the first respondent has also not disputed that a sum of Rs.10,333/- was received by the first respondent/claimant from National Insurance Company Limited for the same accident.

8.This Court has perused and examined the impugned order. As rightly contended by the learned counsel for the Appellant, despite establishing before the Tribunal as seen from Ex.R2 that a sum of Rs.10,333/- was received by the first respondent from National Insurance Company Limited, the Tribunal has erroneously without appreciating the evidence available on record has awarded the entire claim without deducting the sum of Rs.10,333/- which was received by the first respondent/claimant from the National Insurance Company Limited. Therefore, necessarily a sum of Rs.10,333/- will have to be deducted from the sum of Rs.25,998/- awarded by the Tribunal under the impugned Award as it would amount to double payment. Accordingly, this Court deducts a sum of Rs.10,333/- from and out of the total sum of Rs.25,998/- awarded by the Tribunal under the impugned Award.

9.Further, the Tribunal under the impugned Award has awarded a sum of Rs.10,000/- towards compensation for loss of use of car by the first respondent/claimant for a period of 13 days and also for his mental shock and agony. This Court is unable to find any sufficient evidence as seen from the impugned Award as to how the Tribunal came to the conclusion that the first respondent/claimant is entitled for a sum of Rs.10,000/- towards compensation for loss of use of car for 13 days and also for his mental shock and agony. The claim awarded by the Tribunal towards repair charges is only Rs.14,498/- which has also not been disputed by the first respondent/claimant as no appeal has been preferred as against the said sum quantified by the Tribunal under the impugned Award. When the repair charge is only Rs.14,498/-, a sum of Rs.10,000/- awarded by the Tribunal towards compensation for loss of use of car for 13 days and mental shock and agony is excessive and is a disproportionate sum. In the considered view of this Court, a sum of Rs.5,000/- would be an adequate sum to compensate the first respondent/claimant for loss of use of car for 13 days and for mental shock and agony.

10.For the aforementioned reasons, the impugned Award dated 21.12.2012 passed in MCOP No.1603 of 2012 shall stand modified as detailed below:

	(Rs.14,498-10,333=Rs.4,165)
Repair charges	Rs.4,500/- (Rs.4,165 rounded off to Rs.4,500/-)
Transport of the car to workshop	Rs.1,500/-
Compensation for loss of use of car for 13 days and mental shock and agony	Rs.5,000/-
Total	Rs.11,000/-

11. In the result, the appeal shall stand partly allowed as per the modified terms passed by this Court. Accordingly, the Motor Accident Claims Tribunal (Special Sub-Judge) Coimbatore is directed to transfer a sum of Rs.11,000/- together with accrued interest and costs to the bank account of the claimant through RTGS within a period of four weeks from the date of receipt of a copy of this Judgment and the balance amount lying to the credit of MCOP.No.1603 of 2012 shall be transferred to the bank account of the Appellant Insurance Company within the same period. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS II)

/true copy/

Sub Asst. Registrar

pam
To

1. The Motor Accident Claims Tribunal
(Special Sub Judge) at Coimbatore.

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

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