

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2534 of 2014

M.P.No.1 of 2014

M/s.National Insurance Company Ltd.,

Branch Office,

79,Tiruvengkataswamy Chetty Street, Erode

...Appellant/3rd Respondent

vs.

1.Ms.Gandhimati

..1st Respondent / Claimant

2.Mr.K.Shankar

..2nd Respondent /1st Respondent

3.K.Thangamutu

...3rd Respondents/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment dated 12th February, 2013, passed in M.C.O.P.No.76 /2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.C.Ramraj for R1
for M/s.M.Guruprasad
R2 & R3 - Exparte in Tribunal

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Appellant Insurance Company challenging the Award dated 12.02.2013 passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Erode in M.C.OP.No.76 of 2011.

2.Heard Mr.G.Udayasankar, learned counsel for the Appellant and Ms.C.Ramaraj, learned counsel for the first respondent. The second and third respondents have remained exparte both before the Tribunal as well as this Court.

3.The Motor Accident Claims Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.1,14,300/- together with interest and cost for the injuries sustained by her as a result of an accident on 22.08.2010 caused by a vehicle insured with the Appellant.

4.The Appellant Insurance Company has challenged the impugned Award on the following grounds:

(a)Even though, the Tribunal has granted pay and recovery rights to them, the decree has not included the same.

(b)The Tribunal has awarded interest at the rate of 9% per annum which is excessive and is not in accordance with the settled practice.

5.Insofar as the first contention raised by the Appellant Insurance Company is concerned, this Court will have to necessarily accept the said contention as the Tribunal in the operative portion of the impugned Award has categorically held that the third respondent, who is the Appellant herein is entitled for pay and recovery rights. The Tribunal has observed as follows:

"...The third respondent will after satisfying the award recover the award amount from the second respondent."

6.The Tribunal has rightly concluded that the Appellant Insurance Company is entitled for pay and recovery rights. However, it is the contention of the learned counsel for the Appellant that it has not been incorporated in the decree. This Court has also perused the decree and as rightly contented by the learned counsel for the Appellant, the decree has not incorporated the pay and recovery rights granted to the Appellant Insurance Company. The decree reads as follows:

"1)That the petition is allowed and the third respondent be and is hereby directed to pay compensation of Rs.1,14,300/- to the petitioner along with interest at the rate of 9% per annum from the date of application till the date of realization and costs that include the advocate's fee of Rs.6,000/- on behalf of other respondents.

2)That the third respondent shall deposit the award amount within 30 days in the tribunal from the date of award;

3)That the petitioner shall get 50% of the award amount from the tribunal immediately and the remaining

amount will be deposited in a nationalised bank for three years;

4)That the petitioner will get the amount thereafter from the tribunal.

5)That the petitioner shall not be entitled to interest for the period during which this application stood dismissed for default i.e. to say from 24.04.2012 to 31.10.2012.

6)That the petitioner shall pay court fee in accordance with rules 24 of Tamilnadu Motor vehicles accident claims tribunal rules before getting a copy of the award. If he has paid court fee in excess of the court fee required to be paid for the damages actually awarded, it shall be returned to the petitioner.

7)That the third respondent be and hereby is also directed to pay a sum of Rs.6700.50/- being the cost of this petition to the petitioner."

7.In view of non-incorporation of the pay and recovery rights granted to the Appellant in the decree under the impugned Award, this Court is constrained to make it clear that the Appellant/Insurance Company is entitled for pay and recovery rights and the Tribunal is directed to pay the compensation amount as assessed by the Tribunal to the first respondent/claimant and recover the same by filing an execution petition before the same Tribunal from the owner of the vehicle /third respondent in this appeal who is the second respondent in the claim petition.

8.Insofar as the second contention raised by the Appellant as regards the interest fixed by the Tribunal at 9% is concerned, it is a settled practice followed by all the Tribunals in the State of Tamil Nadu that the interest is awarded is only at 7.5% per annum whereas the Tribunal has awarded without any basis interest at 9% per annum which is on the higher side. Accordingly, the same is modified and reduced to 7.5%. p.a. by this Court.

9.For the foregoing reasons, the appeal is partly allowed by incorporating the pay and recovery rights in favour of the Appellant as observed by the Tribunal under the impugned Award in paragraph No.21 and by reducing the rate of interest from 9% to 7.5% p.a. The learned counsel for the Appellant would submit that the entire amount assessed by the Tribunal under the impugned Award has already been deposited to the credit of M.C.O.P.No.76 of 2011 before the Motor Accident Claims Tribunal,

Chief Judicial Magistrate, Erode. If any excess amount has been deposited by the Appellant Insurance Company pursuant, the same shall be refunded to the Appellant Insurance Company by the Tribunal. The Tribunal is directed to transfer the Award amount along with accrued interest lying to the credit of M.C.O.P.No.76 of 2011 to the bank account of first respondent/claimant through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Erode.

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

+lcc to Mr.M.Guruprasad, Advocate, sr no.30936
+lcc to Mr.G.Udhayasankar, Advocate, sr no.31018

C.M.A.No.2534 of 2014

LN(CO)
RMP(27/04/2021)