

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.312 of 2014

M/s.National Insurance Co.Ltd.,
LRN Colony, Sarada College Main Road,
Hasthampatty, Salem.Appellant/Respondent 2

vs.

1.V.Nagendran
2.R.Rathina ... Respondents/Petitioners/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, pleaded to set aside the decree and judgment dated 30th July, 2012 passed in M.C.O.P.No.606 of 2008, on the file of Motor Accidents Claims Tribunal / Principal Sub-Ordinate Judge, Salem and be pleased to exonerate the liability of this appellant.

For Appellant : Mr.G.Udaya Sankar

For Respondents : M/s.R.Syed Mustafa for R1

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 30.07.2012, passed by the Motor Accident Claims Tribunal (Principal Sub Judge, Salem), in M.C.O.P.No.606 of 2008.

2. Heard Mr.G.Udaya Sankar, learned counsel for the appellant and M/s.R.Syed Mustafa, learned counsel for the first respondent.

3. The Appellant Insurance Company has challenged the impugned Award on the following grounds: a) the driver of the insured vehicle was not possessing a driving license at the time of the accident and hence, they are not liable to compensate the claim and b) the quantum of compensation assessed by the Tribunal is excessive.

4. The Tribunal under the impugned Award has directed the appellant to pay the first respondent / claimant a compensation of Rs.1,15,000/- together with interest and cost as detailed hereunder:

Extra nourishment & Medical Expenses	-	Rs.5,000/-
Medical Attendance	-	Rs.5,000/-
Transport to Hospital	-	Rs.5,000/-
Compensation for pain and suffering	-	Rs.20,000/-
Permanent Disability	-	Rs.50,000/-
Loss of earnings	-	Rs.30,000/-

Total Rs.1,15,000/-

5. Insofar as the first contention raised by the appellant with regard to the non-possession of driving license is concerned, the said issue is now well settled by the decision of the Hon'ble Supreme Court in the case of National Insurance Company vs. Swaran Singh & Others reported in 2004 (3) SCC 297, wherein the Hon'ble Supreme Court held that in case the driver / rider of the insured vehicle was not possessing the driving license, the Insurance Company will have to pay the compensation and thereafter, recover the same from the (insured) owner of the vehicle. However, under the impugned Award, despite the finding given by the Tribunal that the driver of the insured vehicle was not possessing driving license, no pay and recovery rights has been granted to the appellant/Insurance Company. Applying the settled position of law, this Court grants pay and recovery rights to the appellant.

6. Insofar as, the second contention raised by the appellant with regard to the quantum of compensation awarded by the Tribunal is excessive is concerned, the said contention also fails in view of the following reasons:

(a) The year of the accident is 2008. The Tribunal has awarded Rs.5,000/- towards extra nourishment & medical expenses, Rs.5,000/- towards medical attendance, Rs.5,000/- towards transport to hospital, Rs.20,000/- towards pain and suffering, Rs.50,000/- towards permanent disability calculated at Rs.2,000/- per percentage of disability for 25% of disability sustained by the first respondent / claimant and another sum of Rs.30,000/- towards loss of earning during the period of his treatment to the first respondent/claimant.

(b) The nature of injuries sustained by the first respondent / claimant have also not been disputed by the appellant / Insurance Company before the Tribunal as seen from the evidence available on record. The first respondent / claimant has sustained fracture on his right shoulder and cut injury over the left knee and multiple injuries all over the body. The Doctor, who examined him has assessed the disability at 25% as seen from the disability certificate Ex.P9. No contra evidence has been produced by the appellant / Insurance Company before the Tribunal to disprove the disability certificate Ex.P9.

(c) This being the case, the assessment of the compensation by the Tribunal at Rs.1,15,000/- under the impugned Award is a just compensation and does not call for any interference by this Court.

7. For the foregoing reasons, this appeal is partly allowed by granting pay and recovery rights to the appellant. However, with regard to the quantum of compensation awarded by the Tribunal under the impugned Award, the same is confirmed by this Court. The rate of interest fixed by the Tribunal at 7.5% is confirmed.

8. The learned counsel for the appellant submits that the entire award has already been deposited before the Tribunal. In view of the said submission, the Appellant is permitted to recover the amount deposited by them from the (insured) owner of the vehicle who is the second respondent herein by filing an execution petition before the same Tribunal.

9. The Tribunal shall transfer the compensation amount along with accrued interest lying to the credit of MCOP.No.606 of 2008 to the bank account of the first respondent/claimant through RTGS within a period of two weeks from the date of receipt of a copy of this Judgment. No cost.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

PNS

To

1.The Principal Sub-Ordinate Judge,
Motor Accident Claims Tribunal,
Salem.

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

+1CC to Mr.G.Udaya sankar, Advocate Sr.28763

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kk[co]
srg 25/03/2021



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