IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.21.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.702 of 2014 &
M.P.No.1 of 2014

National Insurance company Limited,
Branch Manager,
Madurai ... Appellant/3rd Respondent

vs.

1.Minor Ranjithkumar
(Rep. by G/F Selvam) ...1st Respondent/Petitioner
2.Suresh
3.Samayarajan ...2nd and 3rd Respondents/
Respondents 1 and 3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MCOP.No.1460 of 2007on 22.12.2010 on the file of the learned Motor Accident Claims Tribunal (Additional District & Session - Judge, FTC-V of Tirupput at Coimbatore - District.)

For Appellant : Mr.J.Chandran

For Respondents : Mr.M.Lokesh,
for Mr.Ma.P.Thangavel for R1
R2 & R3-Not ready in Notice

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the insurance company challenging the impugned award dated 22.12.2010 passed by the Motor Accident Claims Tribunal (Additional District & Session Judge, FTC-V of Tiruppur at Coimbatore District) in MCOP.No.1460 of 2007.

2. The Appellant Insurance company has challenged the impugned award on the following grounds namely (a) they are not liable to compensate the claim since the insured vehicle was stolen from the owner and at the time of the accident, the owner was not in possession and control of the said vehicle and (b)

the quantum of compensation awarded by the Tribunal under the impugned award is excessive.

3. The Tribunal under the impugned award has granted pay and recovery rights to the Appellant/Insurance company and directed the Appellant Insurance company to pay the claimant a compensation of Rs.1,34,500/- together with interest and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Disability compensation	74,000/- (37 x 2000)
Pain and suffering	35,000/-
Medical expenses	3,500/-
Extranourishment	12,000/-
Discomfort compensation	10,000/-
Total	1,34,500/-

4. Before the Tribunal, the first respondent/claimant who was a minor boy aged four years at the time of the accident and represented by his father and next guardian filed five documents which were marked as Ex.A1 to Ex.A5 and two witnesses were examined namely, the father of the minor first respondent by name Mr.Selvam as PW1 and the Doctor who examined the minor boy as PW2. On the side of the Appellant insurance company, three documents were filed which were marked as Ex.B1 to Ex.B3 and two witnesses were examined on their side namely RW1, their official and RW2, the RTO official before the Tribunal.

5. Heard, Mr.J.Chandran, learned counsel for the Appellant and Mr.Lokesh, learned counsel representing Mr.Ma.P.Thangavel, learned counsel for the first respondent/claimant. Notice sent to the third respondent has been returned with the endorsement " no such addressee". Since this Court is going to confirm the award, notice to the third respondent is dispensed with.

6. Admittedly, there was insurance coverage for the subject vehicle at the time of the accident which happened on 21.08.2006 and the insurance policy was also issued only by the Appellant. Whether at all the vehicle was stolen from the owner as contended by the Appellant is immaterial for the purpose of payment of compensation and the liability of the appellant insurance company. It is settled law that the insurance company is liable to compensate the claim when there was a valid policy of insurance issued by them and there was insurance coverage

when the accident had happened. In the case on hand, the Appellant/insurance company has questioned its liability only on the ground that the insured vehicle was stolen at the time of the accident and hence, they are not liable. This cannot be accepted in view of the settled position of law that if there was a valid policy of insurance and there was insurance coverage on the date of the accident, the insurance company is liable to compensate the claim. Therefore, the first contention raised by the Appellant is rejected by this Court and the Tribunal has rightly directed the Appellant insurance company to pay the compensation to the first respondent/claimant and recover the same from the third respondent/ owner of the vehicle.

7. With regard to the second contention raised by the Appellant that the quantum of compensation awarded by the Tribunal is excessive is concerned, the same is also to be rejected by this Court for the following reasons:

(a) the accident happened in the year 2006. The first respondent/claimant was a minor boy aged 4 years at the time of the accident and he was studying LKG. He has sustained fracture of both the legs and injuries all over his body and he was unable to go to school for more than one year. The Tribunal has recorded the same in the impugned award which has not been disputed by the Appellant Insurance company as seen from the evidence available on record. When the first respondent/claimant has been unable to go to school due to the injuries sustained by him as a result of the accident for more than one year, it can be inferred that the injuries sustained by the first respondent/claimant are grievous in nature.

(b) The Tribunal has assessed the disability of the first respondent/claimant at 37% eventhough the Doctor who assessed the disability of the first respondent/claimant at 38%. The Tribunal has awarded a compensation of Rs.74,000/- towards permanent disability calculated at Rs.2,000/- per percentage of disability for the 37% disability assessed by the Tribunal. After giving due consideration to the injuries sustained by the first respondent/claimant as indicated above and the tender age of the first respondent/claimant, this Court is of the considered view that the assessment made by the Tribunal towards disability compensation cannot be considered to be excessive.

(c) The Tribunal has also awarded a compensation of Rs.35,000/- towards pain and suffering, Rs.3,500/- towards medical expenses, Rs.12,000/- towards extranourishment and transportation and Rs.10,000/- towards discomfort which also cannot be considered to be excessive, for the foregoing reasons.

(d) The Tribunal has also failed to award any compensation towards attender charges under the impugned award. If the same was granted, the compensation awarded by the Tribunal may have been more.

8. After giving due consideration to all these factors, this Court is of the considered view that the compensation awarded by the Tribunal to the first respondent/claimant under the impugned award cannot be considered to be excessive.

9. For the foregoing reasons, both the contentions raised by the Appellant/insurance company in this appeal are rejected.

Conclusion:

10. In the result, there is no merit in this Appeal. Accordingly, this Appeal is dismissed. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The Appellant Insurance company is directed to deposit the compensation amount along with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.1460 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the third respondent/owner of the vehicle . On such deposit being made, Since the first respondent/claimant is minor, the Tribunal shall deposit the amount lying to the credit of MCOP.No.1460 of 2007 in fixed interest in any one of the Nationalised banks till he attains the age of majority and the Next Guardian who is the father of the minor is permitted to withdraw the interest once in six months. If the minor is attained the age of majority, it is open for him to file a formal petition before the Tribunal to declare him as a major. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District and Sessions Judge,
FTC-V, Tiruppur at Coimbatore District.

CC:
The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.J.Chandran, Advocate, S.R.No.31086

C.M.A.No.702 of 2014

GJ(CO)
CB(28/04/2021)