IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.277 & 278 of 2017
and C.M.P.Nos.1982 & 1983 of 2017

C.M.A.No.277 of 2017
The National Insurance Co.Ltd.,
Divisional Manager-II,
Ramakrishna Road,
Salem - 636 007. ...Appellant/2nd Respondent

Vs

1.Rani ...Respondent/Petitioner
2.Rajamani ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the decree and judgment dated 24.06.2016 made in M.C.O.P.No.1160 of 2011 on the file of the Special District Judge at Salem - District.

C.M.A.No.278 of 2017
The National Insurance Co.Ltd.,
Divisional Manager-II,
Ramakrishna Road,
Salem - 636 007. ...Appellant /2nd Respondent

Vs

1.Minor.Manikandan ...Respondent/2nd Respondent
(Minor Represented by guardian and mother Rani)
2.Rajamani ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, set aside the decree and judgment dated 24.06.2016 made in M.C.O.P.No.1170 of 2011 on the file of the Special District Judge at Salem - District.

For Appellant : Mr.J.Chandran
(in both C.M.As)
For Respondents : Mr.S.P.Yuvaraj
for R1
(in both C.M.As)
No representation for R2
(in both C.M.As)

C O M M O N   J U D G M E N T

These Civil Miscellaneous Appeals have been preferred by the Insurance Company as against the awards passed by the Tribunal for a sum of Rs.22,000/- towards compensation to the 1st respondent in C.M.A.No.277 of 2017 and Rs.25,000/- towards compensation to the first respondent in C.M.A.No.278 of 2017, due to the injuries sustained by them in a road accident.

2. The case in brief is as follows :

On 08.05.2011 at about 6.00 p.m, one Parimala, after purchasing the groceries, was returning home along with her relatives one Rani and Minor.Manikandan, who are the claimants herein, in the Minidor Auto bearing Registration No.TN 34 D 4618 belonging to the 2nd respondent in these appeals and insured with the appellant/Insurance Company from Attur to Rasipuram. When the vehicle reached near Thandavarayapuram E.B Office, an unknown vehicle came in a rash and negligent manner from the opposite direction and hit the Auto. Due to the said impact, the said Parimala and the first respondent in both these appeals have sustained grievous injuries. The first respondent in CMA No.277 of 2017 filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/- and the first respondent in CMA No.278 of 2017 filed a claim petition claiming a sum of Rs.5,00,000/-. On consideration of the materials and evidence available on record, the Tribunal has awarded sums of Rs.22,000/- and Rs.25,000/- with interest at 7.5% per annum from the respective dates of petitions. Further, the Tribunal has directed the Insurance Company to pay the compensation amounts to the claimants and thereafter recover the same from the owner of the vehicle, on the ground of violation of policy conditions by the owner of the vehicle.

3.Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel appearing for the appellant/Insurance Company has submitted that the Tribunal ought to have held that the accident had occurred solely due to the rash and negligent manner of the claimants and reduced the compensation under Section 140 of Motor Vehicles Act. It is also submitted that the claimants have travelled in the auto as gratuitous passengers and thus the owner of the vehicle has violated the policy conditions. It is further submitted that the Tribunal has erred in ordering pay and recovery. On the other hand, it is submitted that the compensation amounts awarded by the Tribunal are excessive and exorbitant.

5.Per contra, the learned counsel appearing for the first respondent/ claimant in both the appeals has submitted that the

Tribunal has rightly considered the materials and evidences and awarded the compensation amounts which are just, fair and reasonable and hence, the same need not be interfered with by this Court.

6. Heard both sides and perused the records carefully.

7.With regard to negligence, taking note of Ex.P1-First Information Report, deposition of P.Ws.1 and 2 and in the absence of any evidence as to which vehicle dashed against the minidor auto, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the minidor auto. The contention of the Insurance Company that the claimants travelled in the vehicle as gratuitous passengers and thus the owner of the vehicle has violated the conditions of policy, has been accepted by the Tribunal on considering the materials and evidence available on record, and accordingly ordered the Insurance Company to pay the compensation to the claimants and thereafter recover the same from the owner of the vehicle. Having given a finding that the accident had occurred only due to the rash and negligent driving of the driver of the minidor auto, the Tribunal has directed the appellant Insurance Company, being the insurer for the said vehicle, to pay the compensation to the claimants and since there was violation of policy conditions, the Tribunal permitted the Insurance Company to recover the compensation from the owner of the vehicle. The Tribunal has correctly considered the materials and evidence and fixed the negligence on the part of the driver of the minidor auto and has correctly ordered for pay and recovery.

8.With regard to the quantum of compensation, the Tribunal has relied upon the exhibits, evidence of witnesses and taking note of the injuries suffered by the claimants, awarded the above compensation amounts to the claimants and hence, the same are confirmed.

9.In the result, these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to first deposit the entire award amounts as ordered by the Tribunal with interest and costs, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle. On such deposit being made, the first respondent in CMA No.277 of 2017 is permitted to withdraw her share, on making proper application before the Tribunal. The share of the first respondent / minor, in CMA No.278 of 2017, shall be deposited in any one of the Nationalised Banks, in a fixed deposit, till the minor attains majority. The interest accrued in the bank deposit in respect of the minor, shall be withdrawn by the guardian/mother of the minor-Rani, once in six months directly from the bank, which shall be utilised for the benefit and welfare of the minor.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ms
To

1.The Motor Accidents Claims Tribunal,
Special District Judge at Salem - District.

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

C.M.A.Nos.277 & 278 of 2017
and C.M.P.Nos.1982 & 1983 of 2017

PP(CO)
RMP(11/06/2021)