



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)NO.448 of 2009

M/s.National Insurance Company Limited,
through its Branch Manager,
7/1, West Car Street,
Sivakasi :Appellant/Second Respondent

.vs.

1.V.Sangiliraj :1st Respondent/Petitioner

2.V.Sampath Kumar :Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in M.C.O.P.No.2 of 2007, dated 5.8.2008, on the file of the Additional District Judge/MACT/Fast Track Court, Virudhunagar.

For Appellant :M/s.P.Malini

For Respondents :No appearance
1 and 2

JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the judgment and decree of the Additional District Judge/MACT/Fast Track Court, Virudhunagar passed in M.C.O.P.No.2 of 2007, dated 5.8.2008. The claim petition in M.C.O.P.No.2 of 2007 was filed by the first respondent claiming compensation of Rs.3 lakhs.

2.According to the claimant, on 26.4.2004 at 6.15 a.m., he was riding a Moped from Kalkurichi to Virudhunagar. At that time, a lorry belonging to the first respondent and insured with the appellant-Insurance Company, bearing Registration No. TN 67 A 8190, which was coming from the opposite direction came in a high speed and hit against the Petitioner's Moped. As a result of which, he was thrown away from the Moped and sustained fracture over his right femur cup and joint, fracture over his right ankle and grievous injuries all over the body. So he was immediately taken to Government Hospital at Virudhunagar, wherefrom he was referred to Government Rajaji Hospital at Madurai. It is his further case that he took treatment as inpatient at Thiruvengadam Private Hospital



from 26.4.2004 to 1.5.2004 and thereafter, at Meenakshi Mission Hospital, Madurai from 2.5.2004 to 19.5.2004. Since he suffered partial permanent disability due to the negligence of the driver of the lorry, he is entitled for compensation.

3.The claim was resisted by the appellant stating that the accident had occurred due to the negligence of the claimant himself. The age, occupation and income of the claimant is disputed and it is stated that the claim was excessive. In the additional counter filed, it is stated that the claimant being a Government Servant, is eligible to claim medical expenses incurred through his Department, however, the claim petition is silent with regard to his reimbursement from the Government and hence, the claim is to be dismissed on the ground of suppression of material facts.

4.A reply statement was filed by the claimant stating that the driver of the lorry pleaded guilty before the Judicial Magistrate Court and remitted the penalty and he is entitled to claim medical bills before the Government forum.

5.The claimant examined himself as P.W.1 and was spoken about the manner of the accident. Ex.P1 is the First Information Report, which shows that a criminal case was registered against the driver of the lorry and later pleaded guilty and paid the fine amount. The judgment of the Criminal Court was marked as Ex.P6. Taking note of these facts, Tribunal chose to discard the evidence of R.W.1 to R.W.3 to arrive at a conclusion that the driver of the lorry was responsible for the accident.

6.P.W.1 produced Ex.P4- Wound Certificate and Ex.P9 Medical Bills(Series) Ex.P10-Medical Expenses(Series) to show that he had incurred expenses amounting to Rs.1,21,877/-.Dr.Sampath Kumar was examined as P.W.2 through whom Ex.P11-Disability Certificate was marked to show that P.W.1 sustained disability of 41%. Ex.P13 and Ex.P14 are X-Rays. Based on the evidence, the Tribunal awarded Rs.2,21,877/-. Aggrieved over the decision of the Tribunal, the present appeal has been filed.

7.Mrs.Malini, learned counsel appearing for the appellant/Insurance Company would submit that admittedly, the claimant was a Government Servant and he is entitled for reimbursement for the medical expenses. That apart, in support of Ex.P9 and Ex.P10, no prescription was marked. It is contended that the Tribunal ought not to have ordered Rs.1,21,877/- under the head of medical expenses.

8.Though the respondents have been served and their names were also found printed in the cause-list, none appears on behalf of them.

9.In the instant case, it is not disputed that the claimant was a Head Constable attached to Saththur Town Police Station at the



relevant point of time. In the additional counter filed, the appellant has taken a specific stand that since he is a Government Servant, he is entitled for reimbursement of the medical expenses. But in the reply, it has not been stated how he is entitled to claim medical expenses before the Tribunal as well as before the Government. The Tribunal in Paragraph 9 of the judgment, rejected the contention of the appellant by stating that as per the contract in between the insurer and the insured, the claimant is entitled to seek for compensation before the Tribunal. In my considered view, the finding of the Tribunal cannot be countenanced for the reason that there cannot be duplication of the claim. If the claimant is not entitled for reimbursement of the medical expenses from the Government of Tamil Nadu or if no reimbursement sought for from the Government, there should be specific plea in the counter. Furthermore, it appears no evidence has been adduced on behalf of the claimant in this regard. So in my considered view, the claimant is not entitled for the medical expenses awarded on the basis of Ex.P9 and Ex.P10 which comes to Rs.1,21,877/-. In all other aspects, the award of the Tribunal is confirmed.

10. Accordingly, the Civil Miscellaneous Appeal is partly allowed, by reducing the award amount from Rs.2,21,877/- to Rs.1 lakh. The interest awarded by the Tribunal is confirmed. It is represented that the appellant/Insurance Company has deposited the entire award amount to the credit of the claim petition and the claimant was also permitted to withdraw 50% of the award amount. In view of the above, the Tribunal is directed to repay the excess award amount to the appellant/Insurance Company. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional District Judge(FTC)
<https://hcservices.ecourts.gov.in/hcservices/>
Motor Accident Claims Tribunal,
Virudhunagar.



2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.P.Malini, Advocate Sr.No.26439

JUDGMENT MADE IN
C.M.A(MD) No. 448 of 2009
17.12.2020

VB (24.02.2021) 4P 5C