



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.2.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.2278 OF 2010

M.P.NO.1 OF 2010

The Divisional Manager,
The New India Assurance Co. Ltd.,
Cuddalore - 1.

...Appellant/2nd Respondent

..Vs..

1.S.Arumugam

...Respondent No.1/Petitioner

2.D.Arumugam

...Respondent-2/Respondent No.1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 21.12.2006 made in M.C.O.P.No.438 of 2005 on the file of Additional Subordinate Judge (Motor Accidents Claims Tribunal) Cuddalore.

For Appellant : Mr.J.Chandran

For Respondent No.1 : Mr.A.N.Viswanatha Rao
R2 : Dismissed on 17/02/2021

JUDGMENT

Brief facts of the case is as follows:

On 28.12.2004 at about 9.30 a.m. when the petitioner/first respondent herein along with another was travelling in a Minidor vehicle bearing registration No.PY-01-U-6181 proceeding from East to West, opposite to Primary Health Centre, Kattiyankuppam, the driver of the vehicle drove the vehicle in a rash and negligent manner, while giving way to the on-coming vehicle, the aforesaid vehicle capsized, thereby caused accident, resulting in the claimant sustained multiple grievous injuries including fracture. The claimant has filed a claim petition before the tribunal claiming compensation of Rs.5,00,000/- against the appellant and the second respondent herein being the insurer and owner of the vehicle.

2. The owner of the vehicle viz., second respondent herein remained exparte before the tribunal. On the side of the claimants, P.W.1 and 2 were examined and Ex.P1 to 8 were marked.



On the side of the respondent, R.W.1 was examined and Ex.R1 marked.

3 Tribunal, based on the oral and documentary evidence adduced by both sides, came to the conclusion that due to rash and negligent driving of the second respondent, the accident occurred. The tribunal while awarding compensation of Rs.2,15,000/- to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization, fastened the liability against the appellant/ Insurance Company.

4. Challenging the said award, the Insurance Company has filed the present appeal against the liability fastened against the Insurance Company and also against the quantum of compensation. The compensation awarded by the Tribunal under various heads are as follows:

Heads	Amount in Rs.
Permanent disability 35%	1,89,000/-
Pain and sufferings	15,000/-
Extra Nourishment	10,000/-
Transport	1,000/-
Total :	2,15,000/-

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondent/claimant and perused the materials available on record.

6. Notice was ordered by this Court. Mr.A.Viswanathan, counsel appeared for the first respondent/claimant. But, notice was not served to the second respondent. Private notice was also permitted. Affidavit of service not filed before the Registry. This Court is of the view that notice unserved to the second respondent. Therefore, appeal as against the second respondent is dismissed.

7. The appellant has raised a plea that the respondent / claimant travelled in the second respondent vehicle as unauthorised passenger for which the learned counsel appearing for the appellant relied upon F.I.R. wherein it has been stated that the appellant was waiting for bus and he was travelled in the Minidor vehicle belongs to the second respondent along with another person. The said vehicle is classified as goods vehicle. It permits loadman only to travel, but the claimant was not a loadman, he is unauthorised passenger travelled in the said vehicle. Therefore, Insurance company is not liable to pay compensation.



8. Notice has not been served on the second respondent in the appeal is of the year 2010. Tribunal had come to the conclusion that the appellant/ Insurance Company is liable to pay compensation to the claimant. To contest the case, the owner of the vehicle is not before this Court. The appellant has not taken steps to serve notice to the second respondent. Since notice was not served on the second respondent, this Court cannot interfere with the award passed by the tribunal. However, it is open to the appellant/Insurance Company to proceed against the owner of the vehicle, second respondent herein in accordance with law.

9. In view of the above, the appeal stands dismissed with the above observations. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

// True Copy //

Sub Assistant Registrar

vaan

To

The Additional Subordinate Judge,
(Motor Accidents Claims Tribunal),
Cuddalore.

Copy to :

The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.J.Chandran, Advocate SR.No.10143

Civil Miscellaneous Appeal No.2278 of 2010
M.P.No.1 of 2010

SSI(CO)
RVM(02/09/2021)