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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.3242 of 2010 and
M.P.No.1 of 2010

National Insurance Company Ltd.,
Divisional Office-1, S.R.N. Complex,
Saradha College road, Salem-7.

... Appellant/2nd
Respondent

Vs.

1. Sekar ..1st Respondent/Claimant

2. Rajavel ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 30.06.2009 passed in MCOP No.101 of 2006 by the Additional District Judge, Motor Accident claims Tribunal, Fast Track Court No.1, Salem.

For appellant : Mr. D. Baskaran

For respondents: Notice unserved to R1 and R2

JUDGMENT

Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal questioning the liability.

2. The claimant, has filed a claim petition before the Tribunal seeking compensation of Rs.2,00,000 for the injuries sustained by him in road accident that took place on 17.12.2006.

3. The brief case of the claimant is as follows: On 17.12.2006, at about 7.00 p.m. the claimant was riding his bullock cart on Attur Main road and while nearing Vediappan Koil, a speedy bus bearing registration No. TN-30-F-8778 coming from the opposite side hit the bullock cart, thereby, he fell down from the bullock cart and sustained injuries all over his body and the bullock cart and the goods carried on the bullock cart were also damaged. According to the claimant, the rash and negligent driving of the driver of the bus was the cause of



accident and since the first respondent insured his vehicle with the second respondent, both of them are liable to pay compensation to the claimant.

4. The Insurance company has resisted the claim petition by filing the counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and one Chellakannu, (claimant in MCOP No.107) were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P13 were marked. On the side of the second respondent, no oral and documentary evidence was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.33,427/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Repair works made on the damaged bullock cart, as per Ex.P5	25,504
2	Repair works made on the damaged bullock cart as per Ex.P7	5,743
3	Total	33,247

Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal questioning the liability.

7. The learned counsel appearing for the appellant has taken steps to serve notice to the respondent/ claimant. However, the same could not be effected due to various reasons. It is the contention of the appellant/ insurance company is that this appeal has been preferred only as against the liability fixed on the insurance company to pay compensation and not against the quantum of compensation. Inview of the above submission, this matter was adjourned from time to time. The Award was passed by the Tribunal on 30.06.2009 and this appeal is of the year 2010 and the appeal is kept pending at the stage of service of notice itself for nearly 11 years. Considering the above fact, this court is inclined to dispose the matter today on merits.

8. Heard the counsel for the appellant and I have perused the materials on record.

9. Now the point for consideration is whether the appellant/ insurance company is liable to pay compensation to the claimant.



10. Point. There is no dispute that on the date of accident, the claimant has sustained injuries and during the accident, the bullock cart and the goods carried in the bullock cart were damaged. The only ground raised in the appeal is that the insurance company is not liable to pay compensation for the damages caused to the bullock cart and the goods carried in the bullock cart, since the above properties are not the properties of a third party, coming within the scope of Section 147 of the Motor Vehicles Act.

11. The Tribunal has awarded a sum of Rs.25,504/- and Rs.5,743/- as per Ex.P5 and Ex.P7 respectively, for repair works carried on the damaged bullock cart and totally awarded a sum of Rs.33,247/- as compensation. It is to be noted that the Tribunal has not awarded any consolidated amounts to the claimant as compensation towards the injuries sustained by him during the above said accident and has awarded compensation only as per the bills. Even though there is some force in the contention of the learned counsel appearing for the appellant, by considering the fact that notice is not served on the respondent and also considering the quantum of compensation awarded by the Tribunal, this court cannot go into the issues raised in the appeal. The counsel for the appellant has also not raised any serious dispute and also agreed to pay the compensation as awarded by the Tribunal. Therefore, this court do not find any error or fault in the orders passed by the Tribunal and hence, the same does not warrant any interference by this court. Therefore, the appeal fails.

12. In fine,

(i) The civil miscellaneous appeal is dismissed. No costs. Connected miscellaneous petition is closed.

(ii) The appellant is directed to deposit the entire compensation amount, as awarded by the Tribunal, with interest, from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal, Fast
Track court No.1, Salem.

2.National Insurance Company Ltd.
Divisional Office-1,
S.R.N. Complex, Saradha College road, Salem-7.

3.The Section Officer,
V.R. Section, Madras High Court, Chennai.

CMA No.3242 of 2010 and
M.P.No.1 of 2014

NRL (CO)
CB(10/11/2021)