



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 10.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CMA.No.3248 of 2010 and

M.P.No.1 of 2010

M/s National Insurance Company Ltd.,
III Floor, Anuradha Complex, 10,
Krishnagiri.

... Appellant/ II respondent

Vs.

1. Kamsala ... first respondent/ claimant

2. M. Udayakumar ... second respondent/ first respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 08.06.2010 passed in M.C.O.P.No.157 of 2006 by the Chief Judicial Magistrate, Namakkal.

For Appellant : Mr. S.Arunkumar

J U D G M E N T

Aggrieved over the orders passed by the Tribunal, the appellant/ insurance company has filed the present appeal.

2. The first respondent/claimant has filed a claim petition before the Tribunal seeking compensation of Rs.4,00,000/- for the injuries sustained by her in a road accident that took place on 14.11.2005.

3. The brief case of the claimant is as follows: On 14.11.2005, at about 12.30 p.m., while the claimant was standing by the side of the road, near Moongilari at Keelkuppam-Uthankari Road, the driver of a tempo van bearing registration No.TN-09-AA-8375 barked the van negligently and got down from the van to close the back door of the van, at that time, some persons, who were inside the cabin of the van touched the gear rod, thereby the van positioned to neutral and moved front side



of the road and dashed against the claimant, as a result of which she sustained grievous injuries all over her body. According to the claimant, the negligent act of the driver of van was the cause of accident and since the first respondent/owner of the vehicle insured his van with the second respondent/insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr. Sivakumar were examined as PW1 and PW2 and Ex.P1 to Ex.P11 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 and Ex.R2 were marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,07,788/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent disability	55,000
2	Extra nourishment	10,000
3	Pain and sufferings	25,000
3	Transportation charges	5,000
4	Loss amennities	5,000
5	Loss of income during treatment period	6,000
6	Medical bills	1,01,788
	Total	2,07,788

Aggrieved over the award passed by the Tribunal, the insurance company has filed the present appeal.

7. Despite sufficient opportunities given, notice was not served to the respondents.

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



9. The learned counsel appearing for the appellant/ insurance company submitted that as per the insurance policy, the vehicle was covered only to carry the goods, but it was used to carry the passengers, which is contrary to the permit, Registration Certificate and also the insurance policy. He further submitted, without taking into account the evidence of RW1 and the documents, the Tribunal has erred in directing this appellant/insurance to pay compensation to the claimant and hence, the award passed by the Tribunal warrants interference by this court.

10. Now the point for determination is whether the insurance company is liable to pay compensation to the claimant?

11. POINT

The only ground raised by the appellant/ insurance company is that, they are not liable to pay compensation to the claimant. The contention of the appellant is that the vehicle involved on the date of accident was a tempo van and it was covered under the policy to carry goods, but, it was used to carry the passengers, which is the violation of policy condition and also contrary to the permit and the Registration Certificate.

12. While discussing the point of negligence, after analysing the oral and documentary evidence adduced by the parties and also after making elaborate discussion, the Tribunal has come to the conclusion that the negligence is only on the part of the driver of the tempo van and since on the date of accident, the vehicle was insured with the appellant, the Tribunal has directed the owner of the vehicle as well as the appellant/ insurance company to pay compensation jointly to the claimant. The appellant has not placed any other materials before the Tribunal to disbelieve the evidence adduced on the side of the claimants/ respondents. Though it was contended by the insurance company/ appellant that the vehicle was used to carry passengers, no evidence was adduced to prove their contention before the Tribunal. It is found by the Tribunal that no contradictory statements between the evidence of the claimant and the first information report. Further, while the appellant denied their liability to pay compensation to the claimant, they have not served notice to the respondents in the present appeal, despite sufficient opportunities given to



the appellant, Therefore, in view of the above said discussion, the contention of the appellant cannot be sustained and the same is liable to be rejected. Accordingly, this court is of the opinion that the findings of the Tribunal does not warrant any interference by this court and the appeal fails.

13. In the result,

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

(ii) The appellant/insurance company is directed to deposit the compensation as awarded by the Tribunal along with interest at the rate of 7.5.% p.a. 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 (CS-VII)

// True Copy //

Sub Assistant Registrar

mst

To

1. The Chief Judicial Magistrate, Motor Accident claims Tribunal,
Namakkal.

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

+1CC to M/s.S.Arun Kumar, Advocate, SR.No. 15230

CMA. No.3248 of 2010 and
M.P.No. 1 of 2012

LN(CO)
B.VC (17/09/2021)