



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.2719 of 2012

and

M.P.No.1 of 2012

M/s National Insurance Company Ltd.,
No.165, Nethaji Road, Manjakupam,
Cuddalore.

... Appellant/ II respondent

Vs.

1. N.Velu

... First respondent/ Claimant

2. T. Ananthi

... 2nd respondent/1st respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 23.02.2012 passed in M.C.O.P.No.2731 of 2008 by the Additional Subordinate Judge-I, Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr. G.Udayasankar

For respondents
R1 and R2 : Notice served

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.5,00,000/- for the injuries sustained by him in a road accident that took place on 21.07.2008.

3. The brief case of the claimant is as follows: On 21.07.2008, at about 7.00 p.m. while the claimant was standing on the left side road at Subramanipayuram, a speedy car bearing registration No.PY-01-AF-5859 hit the claimant, thereby he



sustained grievous injuries and fracture and he was admitted to Government Hospital, Cuddalore and thereafter, had taken treatment in the private hospitals. According to the claimant, the rash and negligent driving of the driver of car was the cause of accident and since the first respondent/ owner of the vehicle insured her car with the second respondent/ insurance company, both of them are liable to pay compensation.

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

5. Before Tribunal, on the side of the claimant, the claimant and Dr. Ramalingam were examined as PW1 and PW2 and Ex.P1 to Ex.P9 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.1,69,751 under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent disability	72,000
2	Pain and sufferings	30,000
3	Loss of income for two months	8,000
4	Medical expenses	24,751
5	Transportation charges	10,000
6	Extra Nourishment and damages to articles	25,000
	Total	1,69,751

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

7. Despite notice served to the respondents and their name were printed in the cause list, none appeared for 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 the Tribunal has awarded a huge amount as compensation and wrongly come to a conclusion that the insurance company is liable to pay compensation. He further



submitted that the accident was occurred only due to the claimant, who had suddenly crossed the road, under intoxication, and therefore, there is no contributory negligence on the part of the driver of the car. He also submitted that there is no evidence to prove the income of the claimant, however, the Tribunal has fixed huge amount of Rs.4,000/- as monthly income 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

Dr. Ramalingam, who has given disability certificate Ex.P8, was examined as PW2 and he has assessed the disability suffered by the claimant as 30%. However, the Tribunal has fixed the disability suffered by the claimant as 10% and has awarded a sum of Rs.72,000/- towards "Permanent disability". Further after elaborate discussion and by considering all the facts and circumstances of the case and the nature of injuries sustained by the claimant, has awarded a just and reasonable compensation under the heads "Pain and sufferings", "Loss of income", "Medical expenses", "Transportation Charges" and "Extra nourishment and damages to articles". Therefore, this court opines that there is no error on the findings of the Tribunal and it does not warrants any interference by this court.

12. The next contention of the appellant is that the claimant had crossed the road under the influence of intoxication on the date of accident and hence, the negligence is only on the part of the claimant and therefore, the insurance company is not liable to pay compensation. But this aspect was elaborately discussed by the Tribunal and has rightly come to the conclusion that the insurance company has not proved their case by putting the claimant into blood test and filing report. Hence, this court is of the view that the Tribunal has rightly come to the conclusion that since on the date of accident, the first respondent insured her vehicle with the second respondent, both of them are liable to pay compensation. Accordingly the point is answered as against the appellant/insurance company 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

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional Subordinate Judge-I,
Motor Accidents Claims Tribunal,
Cuddalore.
2. The M/s National Insurance Company Ltd.,
No.165, Nethaji Road,
Manjakupam, Cuddalore.
3. The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No.13036

CMA. No.2719 of 2012
and
M.P.No. 1 of 2012

SMI (CO)
SU(07/10/2021)