IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.3813 of 2011
and
M.P.No.1 of 2011

Assistant Manager, National Insurance Company Ltd.
III Floor, East For Complex, Fort Maidan,
Palakkad, Kerala 678 013.
... Appellant/ 2nd respondent

Vs.

1. Minor Ashiya rep. by mother & Guardian
Mrs. Sukramal, w/o I. Siddique.

... first respondent/ claimant

2. Mr. I. Siddique. ... second respondent/ 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 24.08.2011 passed in MCOP No.933 of 2009 by the I Additional District and Sessions Judge, Motor Accident claims Tribunal, Fast Track Court No.5, V. Tirupur.

For appellant : Mr. Udaya Shankar

For respondents : Mr. Ma.P.Thangavel (for R1)
Notice unserved to R2

JUDGMENT

Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal questioning the liability as well as the quantum of compensation .

2. The minor claimant, representing by her mother / first respondent has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained

by her in a road accident that took place on 07.06.2009.

3. The brief case of the claimant is as follows: On 07.06.2009, at about 5.00 p.m., the petitioner was travelling in a car bearing registration No.KL-7-BD-1005 along with her mother along Ooty main road and while nearing Aadarli Estae privu, the driver of the car driven the vehicle rashly and negligently and hit against the bus bearing registration NO.TN-38-N-1109, coming from opposite side, thereby she sustained grievous injuries all over her body. According to the claimant, the rash and negligent driving of the driver of the car 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, the mother of the claimant and Dr. Senthil kumar were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P6 were marked. On the side of the second respondent, one witness was examined as RW1 and Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.4,10,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Partial permanent disability	32,000
2	Pain an sufferings	30,000
3	Medical expenses	31,100
4	Loss of amenities	10,000
5	Transportation and Extra nourishment	10,000
	Total	1,13,100
	After deducting 15% contributory negligence	96,135

Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal to set aside the same.

7. Heard the learned counsel for the appellant. The appellant has not taken steps to serve notice to the second respondent and hence, this case is posted today for final

hearing before this court.

8. The learned counsel appearing for the appellant has raised the ground of negligence as well as the liability. The contention of the counsel for the appellant is that the total negligence is only on the part of the driver of the car, who driven the car rashly and negligently and hit against the bus. He further submitted that, the driver cum owner of the car is none other than the father of the claimant and that the claimant has mis used the provisions of law and that ground alone the Tribunal ought to have dismissed the claim petition. It is also submitted by him that there is a violation of policy condition, since the policy is only an " Act policy" and no premium has been paid to cover the passengers travelled in the car. He also submitted that the Tribunal has awarded a huge amount as compensation and hence the award is liable to be set aside.

9. Now the point for consideration are

(i) Whether the appellant is liable to pay compensation to the claimant?

(ii) Whether the compensation awarded by the Tribunal is an excessive?

10. Point No.1 and 2

It is not disputed by the appellant that on the date of accident, the car involved in the accident was insured with the appellant/insurance company under the policy. The contention of the appellant/ insurance company is that they are not liable to pay compensation to the claimant, since the policy is only an Act policy and no premium was paid to the passengers travelled in the car. This ground was elaborately discussed by the Tribunal and has rightly come to the conclusion that since there is a condition existed in the policy as" Avoidance of certain terms and Recovery ", the insurance company may pay the compensation to the claimant and then can recover the same from the owner of the vehicle. This appeal is of the year 2011. It is to be noted that despite sufficient opportunities were given to the appellant/ insurance company, they have not taken any steps to serve the notice to the owner of the vehicle/2nd respondent herein in the present appeal. Hence, the appeal cannot be decided as against the owner of the vehicle and it is for the insurance company to workout its remedy for recovering the compensation from the owner of the vehicle, according to law.

11. As far as the negligence aspect is concerned, the after elaborating discussion, the Tribunal has fixed the negligence on the part of the driver of the car at 85% and on the part of the driver of the bus at 15% and since on the date of accident, the offending car was insured with the applicant/ insurance company, they are liable to pay compensation to the

claimant and has also given liberty to recover the same from the owner of the car. Therefore, the above said findings also does not warrants any interference by this court. As far as the quantum of compensation is concerned, after analysing the evidence on record, the Tribunal has awarded a just and reasonable compensation and hence it does not warrants any interference by this court. Accordingly, the points are answered against the appellant and 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 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(CS-VII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional District and Sessions Judge,
   Motor Accident claims Tribunal,
   Fast Track Court No.V, Tirupur.

Copy to:
The Section Officer,
V.R. Section,
Madras High Court, Chennai.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.15752
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.15347

CMA No.3813 of 2011 and
M.P.No.1 of 2011

SVI(CO)
SU(30/09/2021)