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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 594 of 2016

and

C.M.P.No.4844 of 2016

The Branch Manager,
The Oriental Insurance Company Limited,
No.6, Mummy Daddy Complex,
Mettu Street, Thiruthuraipoondi - 614 713.

... Appellant/
Respondent

Vs.

Chellapandiyan @ Pandiyan

... Respondent/Petitioner

PRAYER: Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.137 of 2014, by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tiruvarur, dated 14.10.2015.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : No appearance

JUDGMENT

Though the respondent has been served through the paper publication, there is no representation on behalf of the respondent. Hence, respondent set ex-parte.

2.The Insurance company is the appellant herein.

3.Brief facts of the case are as follows:

(a) On 28.12.2013 at 10.00 p.m., while the respondent herein was going in his motor cycle bearing registration No. TN-50-J-8994 from Thiruthuraipoondi to Papakoil, on the way at Thiruvasal Village ECR road, near subramaniyan house, he met with an accident and sustained serious injuries.

(b) Hence, the respondent herein has filed a petition in MCOP.No.137 of 2014, before the Motor Accident Claims Tribunal, Tiruvarur, for claiming compensation under Section 166 of the M.V Act, for the injuries sustained in the accident.

(c) Neither in the claim petition nor in Ex.P1, the



respondent herein has not mentioned about the manner of the accident how it was happened.

(d) After completion of trial, the Tribunal has awarded a total sum of Rs.3,35,758/-, as compensation. As aggrieved against the same, the Insurance Company has preferred this Civil Miscellaneous Appeal.

4. Heard the learned counsel for the appellant and perused the materials placed on record.

5. The learned counsel appearing for the Insurance Company has raised a plea that the respondent herein had invited the accident on his own fault by drove the vehicle in negligent manner. Hence, he being at fault, he as a tort-feasor can not claim the compensation against his own the Insurance Company. As per the policy, the personal coverage was given only to an extent of Rs.1,00,000/- in respect of scheduled injury sustained therein.

6. Before the Tribunal during the course of trial, on behalf of the respondent herein, he himself was examined as PW1, Dr.Thiruselvi was examined as PW2 and marked Exs.P1 to P13 and on behalf of the Insurance Company, one Mr.Babu has been examined as RW1 and marked Exs.R1 to R7.

7. On a perusal of evidence of PW2/Doctor, Ex.P11/Disability Certificate, Ex.P2/Discharge Summary and also taking note of the condition of the policy as could be seen from Ex.R6/Insurance Policy, this Court finds that the respondent herein is not entitle to any claim other than the personal Insurance coverage given under the police since, he being the tort-feasor cannot be allowed to claim any compensation from his own Insurance Company.

8. Besides, it is not in dispute that he is not the owner of the vehicle and therefore, on the question of no fault liability, this Court is inclined to award a sum of Rs.50,000/- as compensation.

9. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above and the award passed in MCOP No.137 of 2014 by the Tribunal is set aside and it is modified from Rs.3,35,758/- to Rs.50,000/-.

(b) As per the award granted by the Tribunal, the Insurance Company has deposited 50% of the awarded amount and hence, the balance of the amount apart from the modified amount of Rs.50,000/-, the Insurance company is permitted to withdraw the amount before the Tribunal.



(c) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

dua
To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
at Tiruvarur.

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

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.6627

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BR(CO)
CB(04/10/2021)