IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2021

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA No.2476 of 2014
and
M.P.No.1 of 2014

Branch Manager, National Insurance Company Ltd.
III Floor, East For Complex, Fort Maidan,
Palakkad, Kerala 678 013.
... Appellant/ 3rd respondent

Vs.

1. Mrs.T.I.Suhramol, w/o I. Siddique.
... first respondent/ claimant

2. Mr. I. Siddique.
... second respondent/ first respondent

Prayer in CMA No.2476 of 2014: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 17.09.2012 passed in MCOP No.929 of 2009 by the Subordinate Judge, Motor Accident claims Tribunal, 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.

2. The claimant, 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 daughter on the 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 resisted the claim petition by filing the counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr. Senthilkumar were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P9 were marked. On the side of the second respondent, one witness was examined as RW1 and Ex.R1 and Ex.R2 marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,32,805/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Transportation charges	3,000
2	Extra Nourishment	3,000
3	Disability for 29%	58,000
4	Medical expenses	18,805
5	Mental agony	25,000
6	Special compensation	25,000
	Total	1,32,805

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 second respondent/ owner of the vehicle 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 though the Tribunal has fixed the total negligence on the part of the driver of the Car, has wrongly directed the appellant to pay the compensation to the claimant and then recover the same from the owner of the vehicle. He further submitted 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 and that the Tribunal has awarded a huge amount as compensation and hence the same is liable to be dismissed.

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 covered under the insurance policy with the appellant/insurance company. 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 from the owner of the vehicle. This appeal is of the year 2014. 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. Therefore, this court opines that there is no need to interfere with the above findings.

11. As far as the negligence aspect is concerned, the Tribunal has fixed the negligence on the part of the driver and since the offending car was insured with the appellant/ insurance company on the date of accident, has directed the appellant to pay compensation to the claimant at the first instance and then recover the same from the owner of the vehicle. Therefore, the findings also does not warrants any

interference by this court.

12. 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.

13. 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 Subordinate Judge,
   Motor Accident Claims Tribunal, Tirupur.

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

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.15753

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.15348

CMA No.2476 of 2014 and
M.P.No.1 of 2014

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