



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) No.1140 of 2011

and

M.P (MD) No.2 of 2011

WEB COPY

The Manager,
The Oriental Insurance Company Ltd,
Parimalam Complex 2nd Floor,
11 - E.V.N.Road,
Erode - 638 011.

...Appellant/ 2nd Respondent

Vs.

1.T.Angamuthu

...1st Respondent/Petitioner

2.R.Thiyagarajan

...2nd Respondent/ 1st Respondent

PRAYER:Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award of Rs.3,19,100/- (Rupees Three Lakhs Nineteen Thousand and Hundred Only) passed in M.C.O.P.No.375 of 2007, dated 23.02.2010, on the file of the Motor Accidents Claims Tribunal cum Principal Sub Judge, Karur.

For Appellant	: Mr.K.Bhaskaran
For Respondent	: Mr.K.Gokul
No.2	
For Respondent	: Mr.N.Shanmugaselvan
No.1	

JUDGMENT

The Insurance Company has filed this appeal, questioning the judgment and decree passed by the Motor Accidents Claims Tribunal (Principal Sub Court), Karur in M.C.O.P.No.375 of 2007, dated 23.02.2010, wherein, the Tribunal has awarded a sum of Rs.3,19,000/- as against the claim of Rs.15,00,000/-.

2.The case of the claimant in brief is as follows:

On 23.9.2007 at about 4.45 pm, when the claimant was travelling in a car bearing Registration No.TN 27 K 5518 and when the above said car was proceedings in the TNP to Sathiram Road, nearing Pandipalyam pirivu, the driver of the said car drove the same in a rash and negligent manner, in a high speed, from north to south direction and dashed the car against a tree, which was on the left side of the road and as a result of which, the claimant has sustained grievous injuries in his right thigh, right foot and all over the body. Immediately the claimant was taken to Amaravathi



Hospital, Karur on 23.09.2007 and subsequently, he was taken to M.R.Hospital, Rasipuram on 24.09.2007 for further treatment and finally he had taken treatment as inpatient in Ganga Hospital at Coimbatore till 25.10.2007. After that till the filing of the claim petition, he continued to take treatment as outpatient. It is alleged in the claim petition that only due to the carelessness and negligent driving of the Driver of the 2nd respondent, the accident had occurred.

3.Before the Tribunal, the claimant has examined 2 witnesses as PW1 and PW2 and marked 12 documents as Ex.P1 to ExP12. On the side of the Insurance Company neither witness was examined nor document was marked.

The 2nd respondent was set *exparte*. On appreciation of the evidence adduced by the parties, the tribunal came to the conclusion that the driver of the car was responsible for the accident and awarded compensation as stated *supra*. Aggrieved over the judgment and decree of the Tribunal, the present appeal is filed.

4.Mr.K.Bhaskaran, learned Counsel appearing for the appellant would submit that the tribunal has failed to note that the liability of an Insurance Company to pay compensation under the Motor Vehicles Act, 1988 in the absence of a valid insurance coverage. The tribunal has failed to note that there was no coverage for a gratuitous occupant carried in a private car under a liability policy. The Insurance Company cannot be held liable to pay compensation to the claimants in view of the decision of this Court in *Oriental Insurance Company Limited Vs. Sudhakaran K.V. and Others*, reported in (2008) 7 SCC 428, wherein the Court has held that gratuitous passenger in goods carriage would not be covered by a contract of insurance company entered into and between the insurer and the owner of the vehicle in terms of Section 147 of the Act.

5.The learned Counsel for the appellant would further submit that it is a Act policy, which does not cover the gratuitous passengers in a private car and the compensation awarded by the Tribunal is excessive and exorbitant. Therefore, the learned Counsel prayed for allowing this appeal.

6.The learned Counsel appearing for the claimant submitted that the claimant has suffered grievous injuries all over the body in the accident and he had taken treatment in various hospitals and in Ganga Hospital, Coimbatore alone he took treatment as inpatient for 30 days and steel plate was fixed in his legs and subsequently was removed. He suffered 65 % of permanent disability as per ExP11 and the tribunal has also taken into consideration the same. Further due to the disability the claimant has lost his hearing capacity. Therefore, the award of the tribunal need not be interfered with and the learned Counsel prayed for dismissal of the appeal.

7.Heard the learned Counsel on either side and perused the



materials placed on record.

8.I am unable to agree with the submission of the learned Counsel for the appellant that the Insurance Company is not liable to pay compensation, since it is an Act policy, because such a plea was not taken before the Tribunal.

9.A perusal of the records shows that the claimant has sustained injuries in the accident, which had taken place on 23.09.2007. The tribunal after analysing oral and documentary evidence, came to the conclusion that the Insurance Company is liable to pay the compensation. I find no reason to interfering the said finding.

10. It is seen from records that the claimant had incurred expenditure towards treatment to the tune of Rs.1,83,000/- but the Tribunal under the head of medical expenses and Ambulance charge awarded Rs. 2,32,000/-, hence it is reduced to Rs.1,83,000/-. Further without any material the tribunal has fixed the loss of income of the claimant at Rs.12,000/-, therefore, the same is reduced to Rs.3,000/-. The rest of the judgment and decree of the tribunal passed in M.C.O.P.No.375 of 2007, dated 23.02.2010, shall stand unaltered. In fine the total award amount has been reduced from Rs.3,19,100/- (Rupees Three Lakh Nineteen Thousand and One Hundred) to Rs.2,61,100/- (Rupees Two Lakh Sixty One Thousand and One Hundred) .

11.With the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. The insurance company is directed to deposit the entire award amount with accrued interests at the rate of 7.5% per annum and within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the claimant is permitted to withdraw the award amount. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

To

The Principal Sub Judge,
Motor Accidents Claims Tribunal cum Principal Sub Court,
Karur.

<https://hcservices.ecourts.gov.in/hcservices/>



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+1 CC to M/s.K.BHASKARAN, Advocate (SR-1218[F] dated 19/01/2021)

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