**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

| | |
|---|---|
| Date of Reservation | 04.02.2021 |
| Date of Judgment | 13.05.2021 |

**CORAM:**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.1010 of 2017

and

CMP(MD)Nos.10369 and 10370 of 2017

The Regional Manager,
United India Insurance Co. Ltd.,
61/2694, I Floor, Indian Bank Upstairs,
South Main Street,
Thanjavur. : Appellant/2nd Respondent

Vs.

1.Stephen Arulsamy : 1st Respondent/Petitioner
2.Muthamilveeran @ Muthamil Selvan : 2nd Respondent/1st Respondent

**PRAYER:** Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 20.01.2017 passed in MCOP No.648 of 2016 on the file of Motor Accident Claims Tribunal (Special District Court), Thanjavur.

For Appellant : Mr.I.Robert Chandrakumar
For 1st Respondent : Mr.K.Bhaskaran
For 2nd Respondent : Mr.P.Sesubalan Raja

**JUDGMENT**

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Special District Court), Thanjavur, in MCOP No.648 of 2016, dated 20.01.2017. Along with this appeal, CMP(MD)No.10370 of 2017 has been filed to receive the additional documents.

2.The short facts of the case is that on 16.02.2016 at 07.30 pm, while the claimant was talking with one Jayaraj, after parking his two wheeler TVS Camp on the left side of the road near the house of Jayaraj at Kanikkaipuram Main Road, at that time, the Taurus Lorry TN-46-H-1543 came in a rash and negligent manner and dashed against the claimant. In that process, the claimant sustained grievous injuries and immediately, he was taken to Ariyalur Government Hospital for first aid and subsequently, he was referred to Thanjavur Medical College Hospital and thereafter, he was taking treatment in Kannan Hospital, Thanjavur, where he underwent surgery. A claim petition was filed by the claimant seeking compensation of Rs.25,00,000/- for the injuries sustained in the accident.



3.The Appellant Insurance Company filed a counter affidavit denying the allegations made in the claim petition and they also disputed the manner of accident and to pay the compensation.

4.Before the Tribunal, on the side of the claimants, 2 witnesses were examined and marked Exs.P1 to P11. On the side of the appellant Insurance Company, no witness was examined and no document was marked.



5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the offending vehicle was responsible for the accident and awarded compensation of Rs.9,16,074/- with interest @ 7.5% p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court with this appeal.

6.Heard both sides and perused the materials available on record.

7.On the side of the appellant Insurance Company, it is stated that on the date of the accident, the offending vehicle had no insurance coverage and they came to know the above fact only at the time of filing the appeal and hence, the petition mentioned document can be accepted.

8.It is vehemently opposed on the side of the respondents stating that this plea was taken before the tribunal and the condition contemplated under Order 41 Rule 27 CPC were not complied with and hence, the petition mentioned documents cannot be accepted.

9.The main contention of the learned counsel appearing for the appellant is that at the time of accident, the offending vehicle has no insurance coverage and hence, the Insurance Company is not liable to pay the compensation. The reasons stated for non filing of the petition mentioned documents is that they came to know the above fact only at the time of filing the appeal. The records in respects of the accident was maintained only by the Insurance Company. It is their bounden duty to verify whether the offending vehicle had insurance coverage at the time of accident. At this juncture, it is necessary to refer Order 41 Rule 27 CPC, which would run thus:-

> *"27.Production of additional evidence in Appellate Court-(1)The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*
>
> *(a)the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
>
> *(b)the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for other substantial cause, the Appellate Court may allow such evidence or*

*document to be produced, or witness to be examined.*

*(2)Whether additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.*

10.On perusal of the affidavit filed by the petitioner in CMP (MD)No.10370 of 2017, the conditions contemplated under Order 41 Rule 27 CPC were not complied with. Further on perusal of the counter, there was no specific plea stating that at the time of accident, the offending vehicle had no insurance coverage. The reasons stated in the petition are not acceptable. Hence, in the interest of justice, the petition filed in **CMP(MD)No.10370 of 2017** to receive the additional documents is **dismissed.**

11.The learned counsel appearing for the appellant/2nd respondent submitted that at the time of accident, the offending vehicle had no insurance coverage and hence, they are not liable to pay the compensation. For that, the learned counsel appearing for the appellant relied upon the following judgments:-

1.AIR 1982 Madras 176 (Kullappan Vs. Meenakshi (minor) and others);

2.1988 ACJ 270 (National Insurance Co. Ltd., Vs. Jugal Kishore and others);

3.1988 ACJ 956 (United India Fire & General Insurance Company Limited Vs. Natvarlal and others);

4.1994 ACJ 622 (SC) (New India Assurance Co. Ltd., Vs. Anil Mathew and others);

5.2012(2) TN MAC 650 (SC) (Oriental Insurance Company Limited Vs. Surendras Nath Loomba and others);

6.2016(2) TN MAC 520 (SC) (New India Assurance Co. Limited Vs. Tara Devi and others);

7.Unreported judgment of this court made in CMA No.337 of 2004, dated 28.01.2011 (The Branch Manager, United India Insurance Company Limited, Nagercoil Vs. J.MichaelArulkanchal and two others);

8.Unreported judgment of this court made in CMA(MD)No.1261 of 2016, dated 09.12.2020 (M.Kamalanathan Vs. Manokaran and three others) made in CMA No.1261 of 2016, dated 09.12.2020.

12.On the side of the 1st respondent, it is argued that there was no plea to the effect that the offending vehicle had no insurance coverage, which was lapsed in the counter and further, the reasons stated in CMP(MD)No.10370 of 2017 that the Insurance Company came to know that the offending vehicle had no insurance coverage is not acceptable and at the time of accident, it is admitted on the appellant side that the offending vehicle had insurance coverage and the tribunal correctly fastened the liability on the Insurance

Company and prays that the Insurance Company is liable to pay the compensation. Further, the learned counsel appearing for the 1st respondent/claimant submitted that though the cheque given by the owner was bounced, the claimant is a 3rd party and the Insurance Company is liable to pay the compensation to the claimants. For that, the learned counsel appearing for the 1st respondent/claimant submitted the following decisions:-

(i)2011(1) TN MAC 649 (National Insurance Company Ltd. Vs. Kannan @ Sampoorna Kannan and two others);

(ii)2012(1) TN MAC 481 (SC) (United India Insurance Co. Ltd., Vs. Laxmamma and others);

(iii)2019(1)TN MAC 523 (P.Lokanayaki Vs. S.Venkatesan); and

(iv)2019(2) TN MAC 705 (Prema Vs. Sampathkumar).

13.In this case, at the initial stage, the appellant/2nd respondent has not raised any plea to the effect that the offending vehicle had no insurance coverage at the time of accident. It is stated on the side of the appellant/2nd respondent that only at the time of filing the appeal, they came to understand that the offending vehicle had no insurance policy. All the records are available within the Insurance Company. It is their bounden duty to verify, whether the offending vehicle had insurance coverage at the time of accident or not. But on the side of the appellant, it is stated that at the time of filing appeal only, they came to know that the offending vehicle had no insurance coverage. It shows their carelessness attitude. For the failure on the part of the Insurance Company, the claimant cannot be put to hardship.

14.Already, the appellant/2nd respondent filed a petition to receive the additional documents to prove that at the time of accident, the offending vehicle had no insurance coverage. But the above petition was dismissed by this court. It is to be seen that already the 1st respondent/claimant filed Insurance policy copy to show that at the time of accident, the offending vehicle had insurance coverage. Hence, the tribunal correctly came to the conclusion that at the time of accident, the offending vehicle had insurance coverage and the Insurance Company is liable to pay the compensation.

15.In so far as the quantum of compensation awarded by the tribunal is concerned, considering the facts and circumstances of the case, the claimant is not entitled to compensation under the head of loss of marital pleasure and future medical expenses and accordingly, the compensation awarded under those heads are liable to be set aside and they are set aside. In respect of other heads, this court finds that the award of the tribunal is reasonable.

Accordingly, the award of the tribunal is re-calculated as detailed below:-

| Head | Award of the Tribunal (Rs.) | Award of this court (Rs.) |
|---|---|---|
| Loss of future income | 3,88,800/- | 3,88,800/- |
| Pain and sufferings | 1,00,000/- | 1,00,000/- |
| Transportation charges | 25,000/- | 25,000/- |
| Loss of amenities | 25,000/- | 25,000/- |
| Extra nourishment | 20,000/- | 20,000/- |
| Marital pleasure | 1,00,000/- | Nil |
| Attendant charges | 25,000/- | 25,000/- |
| Medical expenses as per Ex.P10 | 32,274/- | 32,274/- |
| Future medical expenses | 2,00,000/- | Nil |
| Total | 9,16,074/- | 6,16,074/- |

16.Accordingly, the claimant is entitled to Rs.6,16,074/- together with interest at the rate of 7.5% p.a. from the date of petition, till the date of realization.

17.In the result, the Civil Miscellaneous Appeal is **partly allowed** and the award of the tribunal is reduced to Rs.6,16,074/- from Rs.9,16,074/-. The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The appellant Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st respondent/claimant is permitted to withdraw the entire amount, less the amount already withdrawn without filing any formal petition before the tribunal. Excess amount if any shall be refunded to the appellant Insurance Company. No costs. Consequently, connected CMP(MD)No.10369 of 2017 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To,

1.The Motor Accident Claims Tribunal/
The Special District Court,
Thanjavur.



2.The Record Keeper,(2C)
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.BHASKARAN, Advocate ( SR-18545[F] dated 13/05/2021 )

C.M.A(MD)No.1010 of 2017
13.05.2021

SGS(CO)
KB(08.06.2021) 6P 5C