

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.10.2022

Delivered On : 04.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.405 of 2009

National Insurance Company Ltd.,

Rep. by its Branch Manager,

Branch-2, No.92, Thevarpuram Road,

Tuticorin District.

... Appellant /3rd Respondent

Vs.

1.Sundarraaj

... 1st Respondent / Petitioner

2.M.S.Balakrishnan

(set exparte in the Trial Court)

... 2nd Respondent / 1st Respondent

3.Dinesh

... 3rd Respondent /2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 04.06.2008, made in M.C.O.P.No.1096 of 2007, on the file of the Motor Accident Claims Tribunal (Fast Track Court No.II), Tirunelveli.

For Appellant : Mr.C.R.Krishnamoorthy

For Respondents : Mr.M.P.Senthi for R1

: No appearance for R2 & R3

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 04.06.2008, made in M.C.O.P.No.1096 of 2007, on the file of the Motor Accident Claims Tribunal (Fast Track Court No.II), Tirunelveli. The appellant herein is the third respondent, the first respondent herein is the claimant, the second respondent herein is the first respondent and the third respondent herein is the second respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.1096 of 2007, is as follows:

On 17.06.2007, the petitioner was travelling in a load auto bearing Registration No.TN-69-H-7776 along the raw bananas, when the vehicle was nearing Theripanai Thiruvengadam village, the driver of the vehicle drove the vehicle in a rash and negligent manner and the auto capsized. The petitioner sustained injuries and he was admitted in Thisaiyanvilai Jerry Hospital and he took treatment as inpatient from 17.06.2007 till 09.07.2009. The petitioner claimed a sum of Rs.4,00,000/- as compensation.

3. Brief substance of the counter filed by the third respondent, in M.C.O.P.No.1096 of 2007, is as follows:

The vehicle is a goods carrier. The petitioner travelled only as an unauthorised passenger. Only 2 persons can travel in that auto, but, at the time of accident, more number of persons travelled in the auto, which is against the policy conditions. On 05.03.2007, the second respondent was the owner of the vehicle, the sale was not intimated to the third respondent. The petitioner sustained only simple injuries. There is no permanent disability. The claim is excessive. The respondent is not liable to pay compensation.

4. On the side of the claimant, 2 witnesses were examined and 12 documents were marked. On the side of the respondents, 1 witness was examined and 1 document was marked. After considering both sides, the Tribunal awarded a sum of Rs.2,10,000/- as compensation to the claimant to be paid by the respondents 2 and 3.

5. Against the award, the third respondent / appellant has filed this appeal on the following grounds:-

The claimant is not a load man, but, a gratuitous passenger and he is not eligible to claim compensation. The claimant was working as a Tea Master in a Hotel and he was not a load man. Though the registration certificate of the vehicle was transferred to the name of the third respondent herein, the policy

was not transferred and that the appellant is not liable to pay compensation. The Tribunal fixed the disability at 70% and the award of Rs.1,50,000/- towards 70% disability is excessive. Ex.P4 was a series of medical bills, wherein, only Rs.25,000/- was mentioned, but, the Tribunal has awarded Rs.45,000/- towards medical expenses, which is excessive. The Tribunal awarded Rs.10,000/- towards pain and sufferings and Rs.5,000/- towards extra nourishment, which are all excessive.

6. On the side of the appellant, it is stated that the claimant is a gratuitous passenger in a goods carrier and he cannot claim compensation and that he was not a load man, but was only a Tea master and that there is no possibility for him to travel in the goods carrier, as the owner or servant of the owner of the goods.

7. On the side of the first respondent/claimant, it is stated that the claimant has travelled in the vehicle only as the owner of the goods and that he was not an unauthorised passenger. The appellant has not denied Ex.A1 to Ex.A12. No evidence was placed on the side of the appellant to disprove the case. Ex.R1 clearly established that the policy was in force and there is coverage for 4 persons.

8. It is seen that F.I.R-Ex.P1 and charge sheet-Ex.P8 were registered against the driver of the vehicle. Copy of the accident register-Ex.P2, Rough sketch-Ex.P5, observation mahazer-Ex.P6, Copy of M.V.I report-Ex.P7, copy of criminal Court judgment-Ex.P8 were marked. On the basis of the evidence of P.W.1 and on the basis of Ex.P1, Ex.P5 to Ex.P9, it is decided that the accident has happened due to the rash and negligent driving of the driver of the Auto.

9. Ex.R1 is the copy of the policy and the policy was inforce. On the side of the appellant, it is stated that the vehicle was transferred to the name of the third respondent herein, but, the same was not intimated to the appellant and the policy was not transferred to the name of the present owner of the vehicle and hence, the appellant is not liable to pay compensation.

10. On the side of the first respondent/ claimant, it is stated that on sale of a vehicle, the insurance policy is deemed to be automatically transferred to the transferee. Under Section 157 of M.V. Act, the policy goes with the vehicle and the policy has automatic coverage.

11. On the side of the appellant, it is stated that the claimant is only a gratuitous passenger and he is not entitled to travel in the goods carrier. The claimant was only a Tea master and there is no possibility for him to be the owner of the goods.

12. On the side of the first respondent/claimant, it is stated that the claimant is the owner of the goods and that premium was collected for 4 persons. Though the claimant was mentioned as a tea master that alone is not sufficient enough to disprove that the claimant did not travel as the owner of the goods or as the representative of the owner of the goods, at the time of accident. Hence, the arguments putforth on the side of the appellant is not maintainable.

13. On the side of the first respondent / claimant, a judgment of this Court reported in 2007-1-CTC-237 is cited, wherein, it is stated as follows:-

“Claimant travelling by goods vehicles – Insurer's liability – When Insurance Policy covers coolies and when claimant travelled as a coolie along with others in the goods vehicles, the Insurer is liable others in the goods vehicle, the Insurer is liable to compensate injured claimants and cannot take shelter stating that as not a passenger vehicle, but only a goods vehicle ”

14. On the side of the first respondent /claimant, a judgment of the Hon'ble Supreme Court reported in 2008-1-TNMAC-1 (Ankur Kapoor V. Oriental Insurance Co. Ltd.,) is cited, wherein, it is decided that a claimant, who travelled in the vehicle as an owner of the goods is eligible for compensation.

15. There is coverage for 4 persons, who travelled in the vehicle and the contention of the appellant that the claimant did not travel as the owner of the goods was not proved. Hence, it is decided that the claimant is entitled to get compensation.

16. The claimant is having 70% disability. The Doctor was examined as P.W.2. Copy of accident register was marked as Ex.P2. Medical report was marked as Ex.P3, X-Ray was marked as Ex.P10 and P12, Wound Certificate was marked as Ex.P11. On the basis of the above documents and on the basis of P.W.2, the Tribunal fixed the disability at 70%, which is reasonable. Due to the accident, two bones in the Forearm of the claimant was fractured and that the claimant could not do any work as a Tea master. For 70% disability, the Tribunal has awarded Rs.1,50,000/- as compensation, which is wrong. Hence, it is decided that the claimant is entitled to Rs.1,40,000/- (1% disability = Rs.2,000/-), for 70% disability.

17. On the basis of Ex.P4 - medical bills, the Tribunal awarded Rs. 44,425/- as compensation, which was rounded off to Rs.45,000/- is reasonable. The Tribunal awarded Rs.5,000/- towards extra nourishment and Rs.10,000/- for pain and sufferings, which are all reasonable. The claimant is entitled to Rs. 5,000/- towards attender charges and Rs.5,000/- towards transport expenses.

18. The total compensation is calculated as follows:-

For 70% Disability	:	Rs.1,40,000/-
Medical expenses	:	Rs. 45,000/-
Extra nourishment	:	Rs. 5,000/-
Attender charges	:	Rs. 5,000/-
Transport expenses	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 10,000/-
Total compensation	:	 Rs.2,10,000/-

19. In total, the claimant is entitled to Rs.2,10,000/- as compensation. For the above reasons, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal.

20. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.2,10,000/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / claimant is permitted to withdraw the entire award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimants is not entitled for interest for the default period, if there is any.

04.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

R. THARANI, J.

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To

1.The Motor Accident Claims Tribunal
(Fast Track Court No.II),
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.405 of 2009

04.11.2022