



C.M.A.(MD)No.820 of 2009

WEB COPY

DATED : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A. NAKKIRAN

**C.M.A.(MD)No.820 of 2009 and
MP(MD).No. 1 of 2009**

The United India Insurance Company Ltd.,
12-A, Kovai Road,
PLA Building, 2nd Floor,
Karur -2.

... Appellant / 2nd Respondent

Vs.

1.S. Mahalingam

2.N.Annadurai

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree, dated 30.01.2008 made in M.C.O.P.No. 62 of 2004, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur.

For Appellant	: Mr. C. Jawahar Ravindran
For R1	: Mr.N.Shanmugasivan

* * * * *



C.M.A.(MD)No.820 of 2009

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant / Insurance Company against the Judgment and decree, dated 30.01.2008 made in M.C.O.P.No.62 of 2004, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur.

2. The appellant / Insurance Company is the 2nd respondent in M.C.O.P.No.62 of 2004. The 1st respondent / claimant, filed a claim petition before the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur, claiming a sum of Rs.3,50,000/- as compensation.

3. According to the 1st respondent / claimant on 08.02.2004, he was travelling as a pillion rider in the TVS Victor Motor Cycle bearing Regn.No. TN 47-J-9571, which was driven by the 2nd respondent. When the said vehicle came from north – south Velusampuram road, the second respondent driven the vehicle in a rash and negligent manner and fell down from the said vehicle and as a result of which, the first respondent has sustained grievous injuries all over the body and fracture in the left hand. Hence, he filed the claim petition.



C.M.A.(MD)No.820 of 2009

4. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a total sum of Rs.45,180/- as compensation.

5. Aggrieved by the said Award, the appellant / Insurance Company has filed the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant submitted that the first respondent herein is not a third party and he is owner of the vehicle and therefore, the 1st respondent is not having any right to claim the amount under the Motor Vehicles Act and he prays to allow this appeal.

7. The learned counsel appearing for the first respondent / claimant would submit that the first respondent / claimant is entitled to the compensation and in support his contention he has relied on the Judgment of this Court, dated 07.01.2020 made in ***Civil Appeal No.9393 of 2019 (Ramkhiladi and another Vs. The united India Insurance Company and another)***, Wherein at para. No.5.8 held as follows:



C.M.A.(MD)No.820 of 2009

“5.8. However, at the same time, even as per the contract of insurance, in case of personal accident the owner, driver is entitled to a sum of Rs.1 Lakh. Therefore, the deceased as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2nd schedule and a fixed amount of Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in the year 2000 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and order has been passed by the High Court in 10.05.2008, i.e., much prior to the amendment in the 2nd schedule. In the facts and circumstances of the present case, the claimants shall not be entitled to the benefit of amendment to the 2nd schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

Therefore, the first respondent / claimant is entitled to get compensation.

Thus, the learned counsel for the 1st respondent prayed for dismissal of this appeal.

8. I have heard the learned counsel appearing for appellant and the first respondent and perused all the materials available on record.

9. In the light of the above said Judgment relied on by the counsel for the first respondent / claimant, the claimant is entitled to the



C.M.A.(MD)No.820 of 2009

compensation and therefore, this Court is not inclined to interfere with the Award passed by the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal is confirmed. The appellant / Insurance Company is directed to deposit the entire award amount to the credit of M.C.O.P.No.62 of 2004, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur, less the amount already deposited, if any, along with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the 1st respondent / claimant is entitled to withdraw the entire amount, with interest by making necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

14.09.2022

Index :Yes/No
Internet :Yes/No
trp



C.M.A.(MD)No.820 of 2009

WEB COPY

To

- 1.The Motor Accident Claims Tribunal / Chief Judicial Magistrate, Karur.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.820 of 2009

A.A. NAKKIRAN, J.,

trp

C.M.A.(MD)No.820 of 2009 and
MP(MD).No. 1 of 2009

07.09.2022