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C.M.A.No.2213 of 2011
and
M.P.No.1 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2213 of 2011

and

M.P.No.1 of 2011

National Insurance Co. Ltd.,
Cuddalore N.T.

... Appellant

..Vs..

1.Vadivel

2.T.Kasinathan

...Respondents

(R1 & R2 were set exparte as per
the order of this Court dated 04.01.2023)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 05.02.2008 made in MCOP No.1854 of 2004, on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge, Cuddalore).

For Appellant : Mr. J.Chandran

For Respondents : R1 & R2 – Exparte



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J U D G M E N T

This appeal has been filed by the Insurance Company challenging the award dated 05.02.2008 passed by the Motor Accident Claims Tribunal/ Principal Subordinate Judge, Cuddalore, in MCOP No.1854 of 2004.

2.The Appellant Insurance Company has challenged the award on the following grounds:

a) They are not liable to compensate the claim of the first respondent/claimant since the accident occurred solely due to rash and negligent act of the first respondent/claimant, in having travelled in a tractor which has no provision to carry any person other than the driver and as per registered certificate, permit and insurance policy, the travelling of person in the Tractor is not covered.

b) The quantum of compensation awarded by the Tribunal is excessive.



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3. The Tribunal under the impugned award has directed the Insurance Company to pay the first respondent/claimant, a compensation of Rs.1,93,200/- together with interest and costs as detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Permanent disability	1,63,200/-
Extra Nourishment	5,000/-
Future Medical Expenses	10,000/-
Transport charges	2,500/-
Attender charges	2,500/-
Pain and sufferings	10,000/-
Total	1,93,200/-

4. Insofar as the first contention raised by the Appellant is concerned, the Tribunal has rejected the said contention on the ground that the Appellant/Insurance Company has not produced any evidence to show that the claimant is an unauthorised passenger in the Tractor and only due to rash and negligent act of the claimant who was travelling in the Tractor, the accident had happened. The claimant is a loadman in the Tractor. This Court has perused the materials and evidence available on record.



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5. Before the Tribunal, the claimant has filed 8 documents which were marked as Ex.P1 to Ex.P8 and two witnesses were examined on his side namely, the claimant himself as PW1 and the Doctor, who examined the claimant, as PW2. On the side of the Appellant/Insurance Company, neither any document was filed nor any witness was examined.

6. Heard the learned counsel appearing for the appellant/Insurance Company.

7. Though the paper publication has been effected on the respondents 1 & 2, they did not appear before this Court and hence, they were set exparte.

8. As rightly held by the Tribunal, the Appellant/Insurance Company has not produced any evidence before the Tribunal to show that the claimant was responsible for the cause of the accident due to negligent act of the claimant while he was travelling in the Tractor as unauthorised passenger. Moreover, RW1, who is the Manager of the Insurance Corporation in his cross examination admitted that the claimant is a loadman and he was



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travelling in the Tractor as loadman. Hence, this Court does not find any infirmity in the said finding and accordingly, the first contention raised by the Appellant is rejected.

9. Insofar as the second contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, this Court has perused the pleadings and evidence adduced by the respective parties. In the claim petition, the first respondent/claimant has claimed that he was aged 25 years and he was a loadman at the time of the accident and was earning Rs.6,000/- per month. However, the Tribunal has fixed the age of the claimant as 22 years as per Ex.P4 - Accident Register and assessed the monthly income of the claimant at the time of the accident as Rs.2,000/-. The year of the accident is 2004. Since the year of the accident is 2004, the notional income of the claimant was fixed by the Tribunal at Rs.2,000/- is a correct assessment. Therefore, there is no scope for interference with regard to the said assessment. The Tribunal has rightly applied the correct multiplier since the claimant was aged 22 years at the



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time of the accident. Taking an overall view, this Court is of the considered view that the compensation awarded by the Tribunal is a just compensation and there is no scope for interference by this Court.

10. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. The Appellant/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal after deducting the amount already deposited, if any to the credit of MCOP.No.1854 of 2004 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the first respondent/claimant through RTGS. Consequently, connected miscellaneous petition is closed. No costs.

10.01.2023

Index:Yes/No
Speaking/Non-speaking order
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To

- 1.The Principal Subordinate Judge
Motor Accident Claims Tribunal , Cuddalore
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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