



CMA(MD).N0.124 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 24.03.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.124 of 2020

National Insurance Company Ltd.,
3rd North Veli Street
Madurai

... Appellant

vs.

1.R.Esakkimuthu

2.S.Padmavathi

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the award passed in MCOP.No.250 of 2017 dated 29.03.2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Thoothukudi and allow this appeal.

For Appellant : Mr.A.S.Mathialagan

For Respondents : No appearance

JUDGMENT

The present appeal has been filed by the Insurance Company



CMA(MD).N0.124 of 2020

challenging the award passed by the Motor Accident Claims Tribunal, Thoothukudi in MCOP.No.250 of 2017.

2. According to the claimant, he was driving a Maruthi Wagon.R Car on 05.03.2015. A Mini-Bus belonging to the first respondent herein came from the rear side and hit against the vehicle and caused huge damage to the rear side of the Wagon.R Car. For the said damages, the petitioner claimant had made a claim of Rs.24,000/- based upon the policy to the insurance company.

3. However, out of the said amount, only a sum of Rs.15,799/- was paid by the second respondent insurance company. The petitioner had also claimed a sum of Rs.5,400/- for loss of income for a period of 18 days and another sum of Rs.8,000/- towards shock and mental agony. Further, the claimant had sought for a sum of Rs.92,132/- towards damages caused to the vehicle and a sum of Rs.18,000/- for engaging a private vehicle for the said date and a sum of Rs.50,000/- towards mental agony.



CMA(MD).N0.124 of 2020

WEB COPY

4.The Tribunal after considering the oral and documentary evidence has awarded a sum of Rs.8,000/- towards damages to the vehicle, Rs.5400/- was awarded for engaging a private vehicle and Rs.8,000/- for mental agony and shock.

5.The learned counsel for the appellant/insurance company had contended that the insurance company had already paid the amount for repair and damages caused to the vehicle and therefore, the claim petition is not maintainable. They further contended that a sum of Rs.5,400/- cannot be awarded for engaging the private vehicle for the said period. A sum of Rs.8,000/- cannot be awarded towards mental shock and agony.

6. Though the claimant has been served, there is no appearance either in person or through counsel.

7.A perusal of the records would indicate that the claimant has placed before the Court Exhibits P4 and P5 relating to the accident incurred by the claimant towards repair of the vehicle. Out of the said amount, a sum of Rs.15,799/- has already been paid by the insurance company. The Tribunal has awarded the balance sum of Rs.8,000/- for



CMA(MD).N0.124 of 2020

repairing the damages incurred to the said vehicle. Therefore, there is no infirmity or illegality in the award of the Tribunal under the said head.

8.However, the claimant prayed for a sum of Rs.18,000/- for engaging a private taxi during the period when the vehicle was under repair. However, no document has been produced on the side of the claimant for establishing the fact that he has engaged a private vehicle for the said period. For the damages incurred to the vehicle, the question of payment of compensation under the head of mental agony and shock would not arise. Therefore, this Court is of the view that awarding Rs. 5,400/- towards engaging a private taxi and awarding a sum of Rs.8,000/- under the head of mental agony and shock are liable to set aside.

9.In view of the above said deliberations, the award is confirmed to an extent of Rs.8,000/- towards damages incurred to the vehicle and the rest of the award is hereby set aside. The appellant Insurance Company is directed to deposit the modified compensation of



CMA(MD).N0.124 of 2020

Rs.8000/- with 7.5% interest per annum from the date of claim petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount with interest by filing a formal permission petition before the Tribunal.

10.This Civil Miscellaneous Appeal is allowed to the extent as stated above. No costs.

24.03.2023

Index : Yes/No
Internet : Yes/No
NCC: : Yes/No
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To

1. The Motor Accident Claims Tribunal

/Chief Judicial Magistrate,
Thoothukudi

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

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CMA(MD).N0.124 of 2020

R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.124 of 2020

24.03.2023