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C.M.A.No.1674 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1674 of 2021

P.S.K.Lakshmi Bai

... Appellant

Vs.

1.V.M.Ganu Sah

2.R.Iswariya Bai

3.The Divisional Manager,
National Insurance Company Ltd.,
Vellore.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Accident Act, 1988, to allow the claim in M.C.O.P.No.133 of 2014 dated 31.07.2019 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), Arakkonam as prayed for with interest and cost.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : R1 – (Unclaimed) NRN

R2 – No Appearance

Mrs.R.Sree Vidhya for R3

J U D G M E N T

The petitioner before the Motor Accident Claims Tribunal is the



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appellant herein. This appeal has been filed against the judgment and decree dated 31.07.2019 passed by the Motor Accident Claims Tribunal, (Subordinate Judge), Arakkonam, in M.C.O.P.No.133 of 2014.

2.The learned counsel appearing for the appellant submitted that on 02.03.2014 at about 1.00 hour, the injured claimant was travelling along with her family members in a Toyoto Qualis Van bearing Registration No.TN-09-R-2232 driven by one Ramesh Sah from Tirupathi to Kancheepuram near Todukupet Village. At that time, due to bad road condition and sudden struck up of the steering, the driver of the vehicle lost the control and the vehicle hit on the culvert wall and fell into the nearby pit, due to which, the petitioner sustained injuries.

3.The learned counsel appearing for the appellant further submitted that the appellant filed claim petition before the Tribunal claiming Rs.9 Lakhs as compensation for the injury sustained by her, however, the Tribunal dismissed the claim petition on the ground that the appellant is the legal heir/ wife of P.S.Kandasamy Sah and the said Kandasamy Sah drove the vehicle and he himself tort feasor and



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caused the accident, hence, the claimant is not entitled for compensation.

4.The learned counsel appearing for the appellant further submitted that though according to the Tribunal, the husband of the appellant drove the vehicle and hit on the culvert wall, due to which the vehicle fell into the nearby pit, the appellant is the occupant of the vehicle and the occupant of the vehicle is covered under the insurance policy and hence, the appellant is entitled to claim compensation, however, the Tribunal simply dismissed the claim petition, which is not sustainable one.

5.The learned counsel appearing for the third respondent Insurance Company fairly submitted that the owner of the vehicle obtained package policy. In the package policy, the occupant of the vehicle is entitled for compensation. Hence, this Court may fix reasonable compensation.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the third respondent Insurance Company and perused the materials available on record.



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7.The accident is not disputed. The claim petition filed by the appellant was dismissed by the Tribunal on the ground that the appellant's husband drove the vehicle in a rash and negligent manner and was responsible for the accident and the appellant's husband is the tortfeasor. However, the policy obtained by the owner of the vehicle is package policy and in the package policy, the owner of the vehicle is entitled for his own damages, occupants [passengers] and also third party. In the present case, the appellant claimant is the occupant of the car and she is entitled to claim compensation under the package policy. Hence, this Court is inclined to award compensation to the appellant/ claimant.

8.Though the appellant sustained injuries, her disability was not assessed and hence no amount could be awarded in the said category. However, the petitioner was an inpatient for sometime and had undergone treatment and the same is evident from Ex.P7 – Discharge summary. Hence, this Court awards a sum of Rs.60,000/- towards pain and sufferings; a sum of Rs.73,000/- towards medical bills as per Ex.P8 – Medical Bill; a sum of Rs.10,000/- towards Transportation charges; a sum of Rs.10,000/- towards attender charges; a sum of Rs.20,000/- towards extra nourishment; a sum of Rs.20,000/- towards



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loss of earning during treatment period.

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9.The appellant/ claimant is entitled to a sum of Rs.1,93,000/- as compensation along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit.

10.The third respondent Insurance Company is directed to deposit the entire compensation amount awarded by this Court, i.e., Rs.1,93,000/-, along with interest at the rate of 7.5% interest from the date of claim petition till the date of deposit, before the Motor Accident Claims Tribunal (Subordinate Judge), Arakkonam, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant is permitted to withdraw the entire amount, on making proper and necessary application before the Tribunal.

11.The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the compensation amount, if required. The Motor Accidents Claims Tribunal (Subordinate Judge), Arakkonam, shall disburse the



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compensation amount upon production of certified copy showing proof of payment of Court fee by the appellant/ claimant.

M.DHANDAPANI,J.

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12.The civil miscellaneous appeal is allowed on the above terms.

The judgment and decree dated 31.07.2019 passed by the Motor Accident Claims Tribunal (Subordinate Judge), Arakkonam, in M.C.O.P.No.133 of 2014, is set aside. No costs.

18.11.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accident Claims Tribunal,
(Subordinate Judge), Arakkonam.

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