



C.M.A.No.221 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.02.2024	Pronounced on 01.03.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.221 of 2021
and
C.M.P.No.1486 of 2021

New India Assurance Co. Ltd.,
Represented by its Manager
Third party claims hub
CSI Building, 2nd Floor
Commercial Complex
Officer's Line, Vellore
Vellore District.

... Appellant

Vs.

1.A.Gowrishankar
S/o.Arumugam
Hindu, aged 29 years
Residing at No.1/46, Kanaganathal Road
Sandapettai, Thirukovilur
Villupuram District.

2.C.Mani, S/o.Chinnakundumani
Residing at No.148, TNHB, Phase-6
Avalapalli Road, Hosur
Krishnagiri District

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24th day of July 2020 made in MCOP.No.362 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondents : No appearance

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 24th day of July 2020 made in MCOP.No.362 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.362 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.



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3.The Insurance Company filed the above Appeal on the point of negligence and quantum.

4.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P1 to Ex.P12 were marked and on the side of the Respondents, RW1 was examined and Ex.R1 to Ex.R2 were marked.

5.Heard the learned counsel for the Insurance Company/Appellant. Even though sufficient opportunities were given to the claim Petitioners, no one represented on behalf of the claim Petitioners.

6.Learned counsel for the Insurance Company stated that due to the mistake of the Petitioner, the claim Petitioner sustained injuries and invited the accident and he being the tort feisor, he is not entitled for compensation, if at all he is entitled, he is eligible only for a sum of Rs.1,00,000/- as lumpsum compensation.



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7. On 05.05.2014, the claim Petitioner was driving his car bearing Reg. No.TN 70 B 7232 slowly and carefully, observing all the rules of the road. At about 08.30 hrs., while proceeding on Tirupattur to Thiruvannamalai road at Udayamuthur Village, near Samathuvapuram, a motor cyclist suddenly crossed the road. Due to the same, the claim Petitioner turned the car and hit against the road side coconut tree and thus he sustained injuries.

8. As per Ex.P.7/discharge summary, in the accident, the claim Petitioner sustained the following injuries: 1. Mid shaft comminuted fracture rt. Femur, 2. Right ear lobe laceration and multiple injuries all over the body. As per Ex.R2/Insurance policy the claim Petitioner is entitled only for a sum of Rs.1,00,000/- towards personal accident coverage.

9. After perusing the evidence of PW1 and also Ex.R2/Insurance policy, I find that the claim Petitioner cannot be treated as third party as he stepped into the shoes of the owner of the vehicle, when he drives the vehicle. He was driving the vehicle at the time of the accident and in order to avoid a motorcyclist, being hit against the car, he invited the accident by dashing



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against a coconut tree and therefore, he is not entitled for any compensation under the Motor Vehicles Act, if at all his case could be treated as a case falling under the special contract of personal accident policy coverage, he is entitled only for a sum of Rs.1,00,000/- as lumpsum compensation.

10.In total, the claim Petitioner is entitled to a sum of Rs.1,00,000/- (Rupees one lakh only).

11.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed and the Judgment and Decree dated 24.07.2020 made in MCOP.No.362 of 2014, by the Motor Accident Claims Tribunal (Special Sub Court), Tirupattur is hereby set aside. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Insurance Company is directed to deposit a sum of Rs.1,00,000/- before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the reduced award amount, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance Company is permitted to withdraw the excess amount already deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

01.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
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To
The Special Sub Judge
Special Sub Court
Motor Accident Claims Tribunal
Tirupattur



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.No.221 of 2021

and

C.M.P.No.1486 of 2021

Dated: 01.03.2024