



Civil Miscellaneous Appeal No.2371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2371 of 2022

and

C.M.P.No.18474 of 2022

The Oriental Insurance Co Ltd.,
Third Party claims Cell (HUB)
Near Murugan Theatre,
Sathuvachari, Vellore – 9

... Appellant

Vs.

1. B.Suman

2. M.Selvaraj

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.08.2021 made in M.C.O.P.No.72 of 2018 on the file of Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet.

For Appellant : Mr.S.Arun Kumar



WEB COPY



Civil Miscellaneous Appeal No.2371 of 2022

For Respondents : Mr.M.Sivakumar for R1

JUDGMENT

The appellant insurance company has preferred the present appeal aggrieved by the award passed by the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet in M.C.O.P.No.72 of 2018 dated 02.08.2021.

2. The case of the 1st respondent / claimant is that he was traveling in a car on 11.01.2018 and at about 6.00 hours, when the car was approaching the godown near Bramapuram, the driver of the car drove the car in a rash and negligent manner and as a result of which, the car hit against a tree. As a result of this accident, the claimant sustained fracture in the right shaft femur, fracture in right clavicle and fracture in right glenoid. An FIR came to be registered in Crime No.17 of 2018. It is under these circumstances, the claim petition came to be filed by the 1st respondent as the occupant of the vehicle as a passenger.



WEB COPY

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, took into consideration Ex.P7, which was the discharge summary issued by the Government Medical college and Hospital, Vellore, which shows that the driver of the car was under the influence of alcohol. The Tribunal also took into consideration the fact that the car was covered by a personal accident claim policy and therefore, the 1st respondent as the occupant of the car will be entitled for payment of compensation. The Tribunal also gave a finding to the effect that the accident had taken due to the rash and negligence on the part of the Tribunal. Having rendered such a finding, the Tribunal fixed the total compensation at Rs.2,81,000/- in the following manner:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Transportation, Extra Nourishment and Miscellaneous expenses	Rs.10,000/-
2.	Attender Charges	Rs.8,500/-
3.	Medical expenses	---
4.	Disability	Rs.2,00,000
5.	Damages to the articles	Rs.2,500/-



Civil Miscellaneous Appeal No.2371 of 2022

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
6.	Pain and sufferings	Rs.40,000/-
7.	Loss of amenities	Rs.10,000/-
8.	Temporarily loss of income	Rs.10,000/-
	Total	Rs.2,81,000/-

The above compensation was directed to be paid by the Insurance company with interest at the rate of 7.5% per annum.

4. The Insurance company aggrieved by the award passed by the Motor Accident Claims Tribunal, II Additional District Judge, Vellore @ Ranipet in M.C.O.P.No.72 of 2018 dated 02.08.2021, has filed the present appeal.

5. Heard Mr.S.Arun Kumar, learned counsel for appellant insurance company and Mr.M.Sivakumar, learned counsel for 1st respondent.

6. This Court carefully considered the submissions made on either



WEB COPY

side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. The main ground that was raised by the learned counsel for the Appellant is that the policy that was issued by the appellant corporation is only an “Act only policy”, which does not cover the occupants of the car. It was further submitted that even assuming that the personal accident coverage is available for the occupants of the car, it is subject to the terms and conditions and the claimant can only claim a maximum of Rs.1,00,000/- and even to make such claim, they must have sustained injury as specified in the policy, which is covered under IMT 16. Hence, it was contended that the Tribunal went wrong in awarding a compensation of Rs.2,81,000/-.

9. *Per contra*, learned counsel for 1st respondent claimant submitted that a very meager amount has been awarded by the Tribunal and the same does not warrant the interference of this Court.



WEB COPY

10. The undisputed fact in this case is that the personal accident coverage that was issued for the occupants of the car is subject to the terms and conditions. If the terms and conditions are fulfilled, a maximum claim of Rs.1,00,000/- can be made. The policies covered under IMT 16, makes it clear that the claimant must have sustained one of the injury that is mentioned in clause 12 (ii) (iv). In the instant case, the claimant had sustained fracture injuries, which is not covered under the terms of the policy.

11. In any case, the policy that was issued by the appellant corporation is an “Act-only policy”. Therefore, without fulfilling the conditions mentioned in the policy, there is no question of granting compensation. This crucial aspect has not been properly appreciated by the Tribunal and the Tribunal has erred in fixing the compensation and directed the Insurance company to pay the compensation.

12. In the light of the above discussion, the award passed by the Tribunal in Motor Accident Claims Tribunal, II Additional District Judge,



Civil Miscellaneous Appeal No.2371 of 2022

WEB COPY

Vellore @ Ranipet in M.C.O.P.No.72 of 2018 dated 02.08.2021, is

hereby set aside. This Civil Miscellaneous appeal stands allowed.

13. In the light of the above conclusion, the claimant will be entitled to make a claim for the compensation fixed by the Tribunal from the owner of the vehicle viz., the 2nd respondent in this appeal. No costs. Consequently, the connected miscellaneous petition is closed.

16.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

rka

To

Motor Accident Claims Tribunal, II Additional District Judge, Vellore @

Ranipet



WEB COPY



Civil Miscellaneous Appeal No.2371 of 2022

N.ANAND VENKATESH.,J
rka

Civil Miscellaneous Appeal No.2371 of 2022



WEB COPY



Civil Miscellaneous Appeal No.2371 of 2022

16.04.2024