BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.175 of 2019
and
C.M.P.(MD)No.2307 of 2019

The New India Assurance Company Ltd.,
Represented by its Divisional Manager,
Divisional Office, No.248-B, Kamaraj Salai,
Rekaha Towers, 2nd Floor,
Madurai. ... Appellant

Vs.

1.M.Ravichandran,
2.R.Karuppiah,
3.S.Banumathi,
4.National Insurance Company Limited,
Represented by its Branch Manager,
Branch Office, No.2,
Serome Building 1st Floor,
Fort Station Road,
Trichy. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment dated 13.07.2018 passed in M.C.O.P.No.128 of 2016 on the file of the Motor Accidents Claims Tribunal (IV Additional Sub Court), Madurai.

For Appellant : Mr.B.Vijay Karthikeyan

For Respondents

for R1	: Mr.S.M.Mohan Gandhi
for R2 & R3	: No appearance
for R4	: Mr.Ramakrishna dass

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JUDGMENT

The instant appeal has been filed challenging the finding on liability.

2. The first respondent/claimant filed a claim petition stating that on 22.05.2015 at about 5.15 a.m., while he was traveling on a van, bearing Reg.No.TN-58-AE-7762, as a cleaner, a vehicle insured with the appellant, namely Eicher lorry, bearing Reg.No.TN-48-AC-9345 came in the opposite direction in a rash and negligent manner and dashed against the van, in which, he was traveling, as a result of which, he sustained grievous injuries.

3. The appellant/Insurance Company filed a counter denying the averments in the claim petition and stated that the accident took place only due to the negligence of the van driver of the insured vehicle and submitted that in any case, the compensation claimed was excessive.

4. Before the Tribunal, the first respondent examined himself as P.W.1 and another witness, namely, Navinraja as P.W.2 and marked Exs.P1 to P6. The Medical File was marked as Ex.W1. The appellant examined two witnesses, namely, Subramanian and Panneerselvam as R.W.1 and R.W.2, respectively, and marked Exs.R1 to R4. The Wound Certificate was marked as Court Document as Ex.C1.

5. The Tribunal, after considering the oral and documentary evidence, held that the appellant is liable to pay the compensation of Rs. 1,23,500/- to the first respondent herein with the interest at the rate of 9% p.a.

6. The learned counsel for the appellant/Insurance Company submitted that the appellant had established the fact that the driver of the insured vehicle did not possess a licence to drive heavy motor vehicle and hence, the Tribunal ought to have directed the appellant to pay and recover the compensation from the owner of the insured vehicle and that the interest awarded at 9% is excessive.

7. Though notice was served on the owner of the offending vehicle, namely, the second respondent herein, none has entered appearance.

8. The learned counsel for the first respondent/claimant, per contra, submitted that the award of the Tribunal is just and reasonable and no interference is called for.

9. The only point for consideration in the instant appeal is *'whether the tribunal ought to have directed the appellant to pay and recover the compensation from the owner of the insured vehicle?'*

10. The appellant/Insurance Company had marked Ex.R3-Insurance Policy, which shows that the gross weight of the vehicle as 11,950 k.g. The appellant/Insurance Company had also marked Ex.R4-licence of the driver of the insured vehicle, which shows that the driver had a licence only to drive light motor vehicle. In the light of the evidence on record, this Court is of the view that the driver of the insured vehicle did not have licence to drive heavy motor vehicle. Therefore, there is a violation of the terms of the contract of insurance. Hence, this Court is of the view that the appellant can be directed to first satisfy the award of the Tribunal and

thereafter, recover it from the owner of the vehicle, namely, the second respondent herein. The point is answered accordingly.

11. Further, it is seen that the Tribunal had directed the compensation amount with interest at the rate of 9% p.a., which is excessive. Hence, this Court is of the view that the first respondent is entitled to the compensation with interest at the rate of 7.5% p.a.

12. There is no challenge with regard to the quantum of compensation awarded by the Tribunal and any other finding of the Tribunal. Hence, the award of the Tribunal is confirmed. The appellant is directed to pay and recover the compensation amount from the second respondent herein.

13. It is reported that the appellant/Insurance Company has already deposited the entire compensation amount.

14. Hence, the first respondent shall be permitted to withdraw the same with accrued interest at the rate of 7.5% p.a. and costs, less the amount already withdrawn, if any, by filing suitable application before the

Tribunal.

15. The appellant/Insurance Company shall be permitted to file an application to obtain refund of the excess compensation amount, if any, deposited.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Motor Accidents Claims Tribunal
(IV Additional Sub Court), Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.175 of 2019

03.09.2024