



CMA.(MD)No.22 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/04/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No.22 of 2021

and

CMP (MD) No.296 of 2021

National Insurance Company Limited,
Rep. by Branch Manager,
Anguvilas Building,
Near Nagaraja Temple,
Nagercoil village & Post,
Agasheeswaram Taluk,
Kanyakumari District. : Appellant/4th Respondent

Vs.

1.N.R.Akash : 1st Respondent/Petitioner
2.N.Tamilselvan : 2nd Respondent/1st Respondent
3.M.Manikandan : 3rd Respondent/2nd Respondent
4.J.Jebarsan Ravi : 4th Respondent/3rd Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to modify the decree and judgment, dated 30/06/2020 made in MCOP No.34 of 2016 on the file of the Principal Sub Court, Nagercoil.

For Appellant : Mr.A.Ilango

For 1st Respondent : Mr.K.C.M.Appaji

For R2 to R4 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal is filed seeking to modify the decree and judgment, dated 30/06/2020 passed in MCOP No.34 of 2016 by the Principal Sub Court, Nagercoil.

2.The facts in brief:-

On 10/07/2015 at about 08.00 pm, the petitioner was travelling as pillion rider in the vehicle driven by his father on the Vetturnimadam to Kattayanvilai road. At that time, the first respondent vehicle was driven by its driver in a rash and negligent manner, hit against the two wheeler. So, the father as well as the petitioner fell down and both of them sustained injuries. They were taken to the Hospital. The petitioner underwent surgery in Muthu Neuro Centre, Chunkankadai and now he is in continuous treatment in the very same hospital.

3.Over the occurrence, a case in Crime No.79 of 2015 was registered for the offences under sections 279 and 337 IPC against the 1st respondent vehicle driver. The 1st respondent vehicle driver admitted the offence and paid the fine amount also. Seeking compensation, the petitioner filed the petition.



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4.The Insurance Company resisted the claim petition stating that the father of the petitioner without following the proper traffic rules, suddenly crossed the road without making any signal and invited the accident. Since because the occurrence took place due to the rash and negligence on the part of the petitioner's father, he is not entitled for any compensation.

5.Before the Tribunal, on the side of the claimant, 3 witnesses were examined and 20 documents marked. On the side of the Insurance Company, no oral and documentary evidence was adduced.

6.At the conclusion of the enquiry, the Tribunal on the basis of the materials produced, recorded a finding that the occurrence took place because of the rash and negligent driving of the first respondent vehicle driver and fixed the liability upon the Insurance Company to pay the compensation on behalf of the insured.

7.Regarding the compensation, on the basis of the medical records produced assessed the disability and the Tribunal arrived at the conclusion and fixed the compensation at Rs.3,01,142/-.



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8. Against which, this Civil Miscellaneous Appeal is preferred.

9. Regarding the negligence and fixation of the compensation, the appellant has no grievance. But by referring to the order passed in CMA(MD)No.315 of 2019, dated 06/04/2022 (National Insurance Company Limited Vs. Narayanan and three others), the appellant has contended that there was a finding by this court that the first respondent vehicle driver was not having any proper driving licence. So, the directed the appellant Insurance Company to pay the compensation and then, recover the same from the insured. Para 8 is relevant for extraction:-

"8.A specific plea was raised that the rider of the offending vehicle does not have valid driving license at the time of accident. Neither the claim petitioner nor the owner has produced the license of the rider of the offending vehicle and hence, the Tribunal has not considered this aspect. Since the rider of the offending vehicle does not have valid driving license at the



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time of accident, the Insurance Company cannot be mulcted with the liability. However, based on various judicial pronouncements, the Insurance Company can be directed to pay the award amount to the claimant at the first instance and then to recover the same from the owner of the vehicle by following the due process of law. Accordingly, the compensation awarded in M.C.O.P.No.89 of 2016 by the Motor Accident Claims Tribunal/Chief Judicial Magistrate's Court, Nagercoil, is confirmed, however modified only to the extent of ''pay and recovery''.

10.That application was filed by the other injured namely Narayanan, the father of the petitioner herein claiming compensation for the injuries sustained by him.

11.It is seen that both are connected matters. But unfortunately, enquiry has been conducted separately. So what applies to MCOP No.89 of 2016 must be made applicable to this matter also.



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12.On that sole ground, the impugned award is modified. There shall be a direction to the appellant to pay the compensation amount on behalf of the insured and thereafter, recover the same from the insured. The amount shall be deposited within a period of two months from the date of receipt of a copy of this order. On the deposit being made, the injured is permitted to withdraw the entire amount.

13.With the above said modification, this Civil Miscellaneous Appeal stands **allowed to the extent noted above**. No costs. Consequently, connected Miscellaneous Petition is closed.

29/04/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal/
The Principal Sub Court,
Nagercoil.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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