



C.M.A.(MD) No.1116 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1116 of 2018

and

C.M.P.(MD) No.11336 of 2018

The Oriental Insurance Company Ltd.,
Shan Complex, Mattan Cherry,
Cochin, Kerala State

... Appellant

Vs.

1.Krishnathevar,
S/o.Sangaiah Thevar

2.Nagoor Meeran
S/o.Mohammed Ibrahim

... Respondents

[R1 - dismissed]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the award and decretal order passed in M.C.O.P.No.7 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Court), Tenkasi dated 18.12.2023.

For Appellant : Mr.S.Veeranasamy

For R2 : No appearance



C.M.A.(MD) No.1116 of 2018

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the Judgment and Decree dated 18.12.2023 passed by the Motor Accident Claims Tribunal (Principal Subordinate Court), Tenkasi, in M.C.O.P.No.7 of 2008.

2. The first respondent/claimant filed a claim petition in M.C.O.P.No.7 of 2008 before the Tribunal stating that while he was travelling in a Pick-up Van of the second respondent, the driver of the Van had suddenly applied break in a rash and negligent manner, as a result of which, the Van capsized and he sustained severe fracture injuries on his right leg.

3. Before the Tribunal, he had examined himself and Doctor as P.W.1 and P.W.2 and marked 11 documents as Exs.P1 to P11. On the side of the appellant, 2 witnesses were examined as R.W.1 and R.W.2 and 5 documents were marked as Exs.R1 to R5.

4. The Tribunal after taking into consideration the oral and documentary evidences awarded a total compensation of Rs.1,02,000/-



C.M.A.(MD) No.1116 of 2018

and directed the appellant Insurance Company to pay the compensation together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs with a further direction to recover the same from the owner of the vehicle who is the second respondent herein.

5. It is seen that this Court by the order dated 26.06.2019 had directed the appellant to rectify the defects pointed out by the Registry, (i.e.) to take steps to implead the legal heirs of the deceased first respondent, failing which, this appeal shall stand automatically dismissed. Since no steps were taken to implead the legal heirs, this appeal is dismissed against the first respondent/claimant.

6. The learned counsel for the appellant Insurance Company submitted that the appellant is aggrieved by the quantum of compensation awarded by the Tribunal and the direction of the Tribunal to pay and recover the compensation from the second respondent owner of the vehicle when the appellant Insurance Company is not liable to pay the compensation.



C.M.A.(MD) No.1116 of 2018

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7. Though Mr.Syed Ali, learned counsel had filed vakalat on behalf of the second respondent in the S.R. Stage, had entered appearance in the admission stage of this appeal and his name is printed in the cause list, today, there is no representation for the second respondent.

8. This Court has carefully considered the submission of the learned counsel for the appellant Insurance Company.

9. On perusal of the Award and submissions made by the learned counsel for the appellant, this Court finds that the compensation awarded by the Tribunal cannot be faulted. The Tribunal after taking into consideration the injury suffered by the first respondent/claimant, the evidence of P.W.2 Doctor and the Documents namely, Ex.P10 Wound Certificate and Ex.P11 X-Ray produced on the side of the first respondent/claimant besides the expenses incurred by the claimant, had determined the compensation at Rs.1,02,000/-. The evidence referred above shows that the compensation awarded by the Tribunal is just and reasonable.



C.M.A.(MD) No.1116 of 2018

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10. Thus, this Court finds that there is no reason to interfere with the Award. The Award of the Tribunal is confirmed. The legal heirs of the first respondent are entitled to the compensation awarded by the Tribunal. The Tribunal had directed the appellant to pay and recover the compensation amount as the second respondent had violated the policy conditions by allowing an extra passenger even as per the claim petition. The said direction is in accordance with law and hence confirmed.

11. It is reported by the learned counsel for the appellant Insurance Company, the entire compensation together with interest and cost awarded by the Tribunal has already been deposited. If the same has not been deposited, the appellant Insurance Company is directed to deposit the compensation of Rs.1,02,000/- together with at 7.5% per annum from the date of the claim petition till the date of realization and costs, less any amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order.

12. On such deposit, the legal heirs of the first respondent are permitted to withdraw the compensation together with interest and cost,



C.M.A.(MD) No.1116 of 2018

less the amount already withdrawn by the first respondent during his life time, if any, by filing suitable application before the Tribunal.

12. If there are more than one legal heir for the first respondent, the Tribunal is directed to apportion the compensation amount among the legal heirs in the manner known to law.

13. In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

07.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Tenkasi.



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C.M.A.(MD) No.1116 of 2018

SUNDER MOHAN, J.

JEN

C.M.A.(MD) No.1116 of 2018
and
C.M.P.(MD) No.11336 of 2018

07.08.2024