BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.08.2024

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THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

C.M.A(MD)No.525 of 2024

M.Panchu

2.Karuppiah

3.Neelamegam

4.Annapooranam

5.Kandasamy

(Appellants 2 to 5 are brought on record
as legal representatives of the deceased
sole appellant vide Court order dated 09.03.2021)
... Appellant / Claimants

Vs.

1. Thirumeni
2. Reliance General Insurance Company
represented by its General Manager,
No.55, 80 Feet Road,
Anna Nagar, Madurai Town,
Madurai District. ... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to allow the appeal and modify the award passed in 31.03.2011 in M.C.O.P.No.91 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, by enhancing the award and order pay and recovery of the compensation amount.

For Appellant	: Mr.N.Palanisamy
For R1	: No appearance
For R2	: Mr. V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed to allow the appeal and modify the award passed in 31.03.2011 in M.C.O.P.No.91 of 2010 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, by enhancing the award and order pay and recovery of the compensation amount.

2. The case of the claimant is that on 24.03.2008 at about 11.30 a.m., the petitioner was returning to his house, he was standing on the northern side of the Madurai to Rameshwaram main road. At that time, a vehicle bearing registration number TN 63 H 5557 was driven by its driver in a rash and

negligent manner and dashed against the petitioner. As a result of which, he sustained injuries on the left side thigh and various injuries all over the body. He was taken to Meenakshi Mission hospital, Madurai, and took treatment as inpatient for 16 days. He underwent surgery. Because of the accidental injuries, he was unable to carry out his work as before. He was doing coolie work and vegetable vending work, claiming compensation amount of Rs. 3 Lakhs, the claim application was filed.

3. That was resisted by the insurance company by filing counter stating that there is a violation of policy conditions, so the insurance company is not liable to reimburse the owner in case of compensation. It is also stated that the petitioner suffered only minor injuries, compensation claimed is excessive and apart from that other customary denials were made.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that the accident occurred because of the rash and negligent driving on the part of the first respondent vehicle driver. Regarding the compensation, the partial permanent disability was fixed at 27%. Rs.1000/- was fixed per percentage of disability and Rs.27,000/- was ordered towards the head of

disability. To that, other customary amounts were added including the medical expenses. Totally, the amount of Rs.2,01,566/- was fixed which was rounded of to Rs.2 Lakhs. That compensation was ordered to be paid by the owner of the vehicle. The insurance company was exonerated from the liability on the ground that the owner of the vehicle namely the first respondent in the main petition permitted an unauthorised person to drive the vehicle. Since there is a violation of the policy conditions, the insurance company is not liable to pay compensation. Against which this appeal has been preferred by the claimants. Pending appeal, the claimant died. The legal representatives were brought on record.

5. Only short point arises for consideration as to whether the Tribunal was right in exonerating the second respondent herein absolutely, even without ordering pay and recovery.

6. Learned counsel for the second respondent would fairly submit that if there is any violation of policy then insurance company is liable to pay the compensation and used to recover that amount from the owner of the vehicle but here, after a long delay this appeal has been preferred by the appellant.

But he would add further that the insurance company is liable to pay compensation awarded by the Tribunal, only from the date of filing of this appeal till the realization and is not liable to pay interest prior to that period.

7. There is a fair submission made by the learned counsel for the second respondent. Since because the delay occurred due to the lapse on the part of the appellants herein, the second respondent cannot be fastened with the liability of paying the interest.

8. Therefore, the award passed in 31.03.2011 in M.C.O.P.No.91 of 2010 by the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai, is modified and the second respondent herein is directed to pay Rs.2 Lakhs(Rupees Two Lakhs only) as ordered by the Tribunal, with interest at the rate of 7.5% per annum, from the date of filing of this appeal till the deposit. The appellants are permitted to proceed against the owner of the vehicle namely the first respondent herein for interest as ordered by the Tribunal for the rest of the period. The second respondent is liable to recover the amount so deposited from the first respondent herein / driver of the vehicle.

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

01.08.2024

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

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To

1.The Motor Accident Claims Tribunal /
Chief Judicial Magistrate, Sivagangai.

2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN, J.

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