(2014) 03 MAD CK 0007

In the Madras High Court

Case No : C.M.A. No. 2570 of 2010

National Insurance Co. Ltd. APPELLANT

Vs

B.N. Veerachari RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Citation : (2014) 2 TNMAC 427

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : S. Vadivel, Advocate, for the Applicant; M. Sriram, Advocate, for the Respondent No. 1; No appearance, for the Respondent No. 2

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—The Insurance Company has come up with the Appeal as against the Award passed in M.C.O.P. No.827 of 2006 dated 4.3.2010, by the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri.

2. The claim came to be filed by the injured Claimant/First Respondent herein, a goldsmith by profession alleging that on 28.8.2004 at about 10.30 hours, when his nephew and himself were walking near Thenmozhi Hotel at Hosur Road and by that time, the Bus bearing registration No. TN-29-L-6899, belonging to the Second Respondent herein and insured with the Appellant, driven in a rash and negligent manner, dashed against the Claimant and caused grievous injuries and that the Claimant was taken to a Private Hospital viz., KCN Hospital, Hosur, thereafter in a Private Hospital at Bangalore and thereafter, he was admitted in the Government Hospital, Bangalore and hence, claimed a sum of Rs.7,00,000/- as Compensation.

3. The Insurance Company denied the occurrence of the accident itself and contended that the claim is a bogus one as there are wrong particulars with regard to the time of the accident and no original documents are filed to prove the claim with regard the treatment taken by the Claimant and also denied with

regard the particulars of age and income.

4. The Claimant was examined as PW1 and the Doctor who issued the Disability Certificate was examined as PW2 on the side of the Claimant and ten documents were marked. An investigator and the Administrative Officer of the Insurance Company were marked as RW1 & RW2 and the Driver of the Bus was examined as RW3. The Investigator''s Report and Insurance Policy were marked on the side of the Insurance Company.

5. On the basis of the oral and documentary evidence, the Tribunal found the negligence on the part of the Driver of the Bus, fixed the liability upon the Insurance Company and awarded a sum of Rs.1,52,741/- with interest at 6% per annum.

6. Learned Counsel for the Appellant-Insurance Company would submit that the Tribunal ought to have dismissed the Claim Petition on the grounds that the claim itself is based on a false Complaint that there is variation of time of accident between the version found in FIR and the Claim Petition that discharge summary discloses accidental fall while riding bike while the Claim Petition discloses the Claimant as a pedestrian and the Tribunal has erred in discarding the evidence of RWs.1 to 3. The Compensation awarded is also an excessive one, he further submitted.

7. Learned Counsel for the First Respondent/Claimant would submit that the Award passed by the Tribunal is only based on proper analysis of the oral and documentary evidence available on record and hence, it need not be interfered with.

8. The contention of the learned Counsel for the Insurance Company that a false Complaint is lodged with some time variation cannot be sustained in view of the fact that the Insurance Company has not taken any steps to prove their contention by producing the details with regard to the status of the FIR lodged against the Driver of the Bus.

9. Coming to the question of disclosure in the Discharge Summary with regard to accidental fall from bike when the fact projected in the Claim Petition being a hit against him by the Bus when he was walking along the road, it need not be considered as a big flaw as the same would be recorded by the Doctor according to the version of any third party, who takes the injured to the Hospital or, of course, by the injured, but, who would be fainted having met with the accident.

10. With regard to the evidence produced on the side of the Insurance Company, RW3, being Driver of the Bus, is an interested witness and hence, it cannot be considered. RW2, Administrative Officer of the Insurance Company speaks only based on the report Ex.R1 filed by RW1, Investigator. A perusal of the evidence of RW1, an Investigator of the Insurance Company would show that he was pre-determined to support the contentions of the Insurance Company. His evidence is lacking with the particulars as to when he visited the alleged place of occurrence

and he has not taken care to know the status of the FIR lodged against the Driver of the Bus and he has just bounced back on seeing a locked door at the address of the Hospital where the Petitioner alleged to have taken treatment. He has also went on presumption to contend that a bogus claim is made by preparing fake Medical Bills. Hence, the Tribunal has rightly found that the evidence of RW1 & RW2 is not trustworthy.

11. With regard to the quantum of Compensation, the Tribunal has awarded only a reasonable amount towards disability viz., Rs.1000/- for each percentage and awarded Rs.40,000/- towards 40% Permanent Disability and awarded Rs.96,741/- towards Medical Expenses only based on Medical Bills produced. The award on other heads are meager amounts and hence, on the quantum aspect also, the Award passed by the Tribunal warrants no interference.

12. The Appellant-Insurance Company is directed to deposit the entire award amount with interest and costs as awarded by the Tribunal deducting the amount already deposited by them within a period of six weeks from the date of receipt of copy of this Judgment and on such deposit, the Claimant is entitled to withdraw the same by filing appropriate Application.

13. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

