
(2014) 11 MAD CK 0464

In the Madras High Court

Case No : CMA Nos. 2796 and 2797 of 2004

National Insurance Company Limited

APPELLANT

Vs

Chinnaswamy

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0464

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Judgement

N. Kirubakaran, J.—Both these appeals have been filed by the insurance company against the award of Rs.76,244/- and Rs.1,11,674/- awarded in favour of the 1st respondent, respectively in both the appeals, on the ground that the driver of the vehicle did not possess the badge to drive the heavy vehicle and therefore pay and recovery should have been ordered by the tribunal.

2. Heard Mrs.N.B.Surekha, learned counsel appearing for the appellant/insurance company and Mr.M.Selvam, learned counsel appearing for the respective 1st respondent/claimant.

3. As far as the negligence is concerned, there is no dispute. However, with regard to the possessing of valid driving licence at the time of accident, it is proved that the driver of the tempo van possessed only LMV licence and he did not have the badge to drive the commercial transport vehicle. It is also proved by examining RW1, RTO Officer who had deposed that the driver of the tempo van had only LMV licence and did not have the badge to drive the heavy licence and the licence was also marked as Exs.B1 & B2. When that is the position, the tribunal should have directed the insurance company to pay the compensation amount and recover the same from the owner of the vehicle, as third party should not be unnecessarily harassed for violation of policy condition.

4. In both the claim petitions, though the tribunal found that the driver of the tempo van did not have the required licence and still directed the appellant/

insurance company to pay the compensation amounts. Therefore, the said finding of the tribunal is modified directing the appellant insurance company to pay the compensation amount to the respondents/claimants and recover the same from the owner of the vehicle.

5. As far as CMA No. 2796 of 2004 [MCOP No. 899 of 2003] is concerned, the 1st respondent sustained injuries in the right shoulder and right thigh. Taking into consideration Ex.P2, wound certificate and also the fact that the 1st respondent/claimant had taken treatment for 14 days and the disability determined at 15%, the tribunal awarded a sum of Rs.50,000/- towards loss of future earning capacity, Rs.3,000/- towards extra nourishment and Rs.13,244/- towards medical expenses which are very reasonable and hence the same are confirmed. The amount of Rs.5,000/- towards pain & suffering awarded by the tribunal is hereby enhanced to Rs.10,000/-. However, the compensation amount is not enhanced as the original award is only to the tune of Rs.71,244/- and the tribunal, by mistake has awarded Rs.76,244/- by wrong calculation. In view of that, the award of Rs.76,244/- awarded by the tribunal is sustained. The rate of interest awarded by the tribunal @ 9% per annum from the date of petition till the date of deposit remains unaltered.

6. As far as CMA No. 2797 of 2004 [MCOP No. 900 of 2003] is concerned, the tribunal, considering fracture of two bones in the left foot sustained by the 1st respondent/claimant, determined disability at 15%, even though the doctor assessed the same at 40%. Rs.61,200/- awarded by the tribunal towards 15% disability by adopting multiplier method and Rs.25,000/- awarded towards grievous injuries are unwarranted and hence the same are deleted. Since the 1st respondent/claimant sustained 15% disability, by granting Rs.2,000/- for each percentage of disability, a sum of Rs.30,000/- is hereby awarded under the head disability. Only a sum of Rs.5,000/- was awarded towards pain & sufferings and hence the same is enhanced to Rs.10,000/-. The tribunal had not awarded any amount under the head loss of income during treatment period. Hence, a sum of Rs.10,000/- is hereby awarded under the said head. Rs.3,000/- awarded towards extra nourishment is hereby enhanced to Rs.10,000/-. Rs.17,474/- awarded towards medical expenses is reasonable and hence the same is confirmed. No amount has been awarded towards transportation and hence a sum of Rs.5,000/- is awarded under the said head, in all amounting to Rs.82,474, rounded off to Rs.85,000/- alongwith interest @ 9% per annum from the date of petition till the date of deposit, as awarded by the tribunal.

7. In the result, CMA No. 2796 of 2004 is dismissed confirming the award passed by the tribunal and CMA No. 2797 of 200 is partly allowed reducing the compensation awarded by the tribunal to Rs.85,000/- alongwith interest @ 9% per annum. No costs.

8. It is represented by the leaned counsel appearing for the appellant/insurance company that the entire amount awarded by the tribunal has already been deposited. In view of same, the 1st respondent/claimant is permitted to

withdraw the award amount, as per the order of this court, alongwith proportionate interest and costs. As per the modified award passed by this Court, the appellant/insurance company is permitted to withdraw the excess amount, if any lying in the deposit, alongwith proportionate interest and costs.