(2011) 06 MAD CK 0447

In the Madras High Court

Case No : C.M.A. No. 1343 of 2009 and M.P. No''s. 1 of 2009 and 1 of 2011

National Insurance Company Ltd. APPELLANT

Vs

Mani and Madheswaran RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0447

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : K. Surya Narayanan, for the Appellant; C. Kulanthaivel, for R1, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / National Insurance Company Ltd., against the judgment and decree made in M.A.C.T.O.P. No. 31 of 2006, dated 01.08.2007 on the file of Motor Accidents Claims Tribunal, Sub Judge, Sankari.

2. The short facts of the case are as follows:

On 20.08.2005, at around 06.45 a.m., the Petitioner was proceeding in a mini tempo vehicle bearing Registration No. TN55-H-1246 from Tiruchengode to Vellore Main Road. At that time, the first Respondent''s tempo bearing Registration No. TN41-2287, driven by its driver in a reckless manner, hit against the Petitioner''s vehicle. In the result, he had sustained grievous injuries including bone fractures. Hence, the claim petition has been filed against the Respondents for compensation of a sum of Rs. 3,00,000/- with interest.

3. The second Respondent had filed a counter statement and additional counter statement and resisted the claim petition. The Respondent stated that the accident had not been committed by the first Respondent''s driver. Actually, the claimant had driven his vehicle in a negligent manner and dashed against the first Respondent''s vehicle. As such, the accident had happened. In the said

accident, two vehicles had been damaged. As such, the owner of the claimant''s vehicle and its insurer are necessary parties in this case. The age, income and occupation of the claimant are also denied. The claim amount is an excessive one.

4. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the accident had been committed by the driver of the first Respondent''s vehicle, in a rash and negligent manner?

(ii)Whether the claimant is entitled to receive compensation from the Respondent? If so, what is the quantum of compensation?

5. On the side of the claimant, he himself was examined as PW1. On the Respondents side, two witnesses were examined and a copy of the insurance policy was marked. On the side of the claimant, the following documents were marked viz., First Information Report, Wound Certificate, Motor Vehicle Inspector''s Report, Medical Bills, Driving Licence, copy of the insurance policy.

6. PW1 had adduced evidence that on 20.08.2005, at around 06.45 a.m., he was proceeding in a mini door vehicle bearing Registration No. TN55-H-1246 from Andipalayam to Tiruchengode. At that time, the first Respondent''s vehicle came from the opposite direction and dashed against the claimant''s vehicle. PW1 further stated that he had sustained head injury and injuries on both his hands. Immediately, he was taken to the Government Hospital, Tiruchengode for preliminary treatment. Thereafter, he was shifted to Nallaswamy Hospital for further treatment, wherein he had undergone treatment from 20.08.2005 to 30.08.2005. In order to prove the accident and mode of treatment and nature of injuries, the claimant had marked the below mentioned documents viz., First Information Report, Wound Certificate, Motor Vehicle Inspector''s Report, Medical Bills, Driving Licence, copy of the insurance policy. The claimant further adduced evidence that at the time of accident, his age was 38 years and he was the driver-cum-owner of the vehicle. As such, he was earning a sum of Rs. 10,000/- per month. He had spent a sum of Rs. 50,000/-towards medical expenses. He further stated that he had sustained injuries on his head, right forearm, spinal cord, upper jaw, left hand and right leg.

7. On considering the evidence of the claimant and on perusing the documents marked by the parties, the Tribunal had awarded a sum of Rs. 43,598/- together with interest at the rate of 7.5% per annum.

8. The learned Counsel for the Appellant argued that the goods vehicle was driven by a person, who did not have a valid and effective driving licence, which is breach of insurance policy conditions. The doctor was not examined regarding nature of injuries and disability. The driver possessed only a light motor vehicle licence. The quantum of compensation was assessed in the absence of doctor''s evidence.

9. The learned Counsel for the claimant argued that it was an admitted fact as

per Ex.P1, First Information Report, Ex.P2, Wound Certificate that the claimant met with the accident and that the same was caused by the first Respondent''s driver. The claimant had spent a sum of Rs. 14,098/-towards medical expenses. To substantiate the claim, Ex.P4, medical bills were marked. But, the Tribunal had awarded the total compensation a sum of Rs. 43,598/-only which is not adequate. The claimant had sustained seven grievous injuries and he had undergone treatment, as inpatient, at a private hospital for a period of 10 days. Thereafter, he had undergone treatment, as an outpatient, for a lengthy period. The Tribunal had not awarded compensation under the head of ''attender charges''.

10. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the quantum of compensation is not on the higher side, considering the nature of injuries and medical bills. Regarding liability, the driver of the offending vehicle possessed only a light motor vehicle licence. As such, the Insurance Company is liable to pay the compensation to the claimant and recover the same from the owner of the vehicle. Therefore, the award is confirmed, with the above observations.

11. On 22.06.2009, this Court imposed a condition on the Appellant / Insurance Company to deposit the entire compensation amount to the credit of M.A.C.T.O.P. No. 31 of 2006, on the file of Motor Accidents Claims Tribunal, Sub Judge, Sankari. Now, it is open to the claimant to withdraw the entire compensation amount with accrued interest lying in the credit of M.A.C.T.O.P. No. 31 of 2006, on the file of Motor Accidents Claims Tribunal, Sub Judge, Sankari, after filing a Memo along with this order.

12. Resultantly, the above Civil Miscellaneous Appeal is disposed of. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.A.C.T.O.P. No. 31 of 2006, dated 01.08.2007, on the file of Sub Judge, Sankari is modified. There is No. order as to costs. Consequently, connected miscellaneous petitions are closed.

