(2017) 12 MAD CK 0089

In the Madras High Court

Case No : 856, 857 of 2009 and 278 of 2014?C M A(MD)No 856 of 2009

The Oriental Insurance Company Limited — APPELLANT

Vs

Parameswaran & Anr — RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173, Section 173 - Appeals

Citation : (2017) 12 MAD CK 0089

Hon'ble Judges : T.Krishnavalli

Bench : SINGLE BENCH

Advocate : T.Krishnavalli

Judgement

1. Since these three Civil Miscellaneous Appeals arise out of the common award, dated 17.02.2009 made in M.C.O.P.Nos.130 and 158 of 2007, on the file of the Motor Accidents Claims Tribunal cum Principal Subordinate Judge, Tirunelveli they are taken up together for final disposal.

2. For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3. This is a case of injury. It is the specific case of the claimants that on 12.01.2006 at 06.00 A.M., the injured Parameswaran as a load man and injured Jintha as a cleaner travelled in the lorry. The driver of the insured lorry drove it in a rash and negligent manner dashed against the right rear side of another lorry bearing registration No.KL- 01- AC- 4003 and due to it the cleaner and the load man sustained multiple injuries all over the body. Immediately the injured claimants were taken to Thiraviam Hospital at Nagercoil and admitted as inpatient from 12.01.2006 to 01.03.2006. Even after discharge from the hospital, the claimants are taking treatment continuously and the police had registered the case against the driver of the insured lorry.

4. For the injuries sustained, the claimants have filed in M.C.O.P.Nos.130 and

158 of 2007, on the file of the Motor Accidents Claims Tribunal cum Principal Subordinate Judge, Tirunelveli. In both the petitions the second respondent Insurance Company denied the averments made in the claim petitions.

5. Before the Tribunal, on the side of the claimants P.W.1 to P.W.3 were examined and Exs.P.1 to P.20 were marked. On the side of the second respondent R.W.1 was examined and Exs.R.1 to R.3 were marked.

6. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the learned counsel for the claimants and the Insurance Company and also appreciating the evidence on record held that the accident occurred only due to the rash and negligent driving of the driver of the first respondent and directed the first and the second respondent Insurance Company joined and severally liable to pay a compensation of Rs.2,87,000/- to Parameswaran, claimant in M.C.O.P.No.130 of 2007 and Rs. 1,08,000/- to Jintha, claimant in M.C.O.P.No.158 of 2007, against which the second respondent Insurance Company has filed C.M.A. (MD)Nos.856 and 857 of 2007, questioning its liability and the quantum of compensation awarded by the Tribunal and claimant Parameswaran seeks enhancement of compensation in C.M.A(MD)No.278 of 2014.

7. The learned Counsel for the appellant Insurance Company in C.M.A. (MD)Nos.856 of 2009 and 857 of 2009 submitted that injured claimant Parameshwaran claimed to be travelled as a load man in the goods vehicle. Hence, it is the duty of the owner to pay additional premium for the load man. But in this case no additional premium was paid for the load man by the owner of the vehicle. Hence, it amounts to violation of the policy conditions and hence the Insurance Company is not liable to pay the compensation to the claimants.

8. On the other hand, the learned counsel for the claimants argued that the claimant Parameswaran was travelling in the offending vehicle as a load man and there is Insurance coverage for load man and hence there is no violation of policy condition. Hence, the Insurance Company is liable to pay a compensation to the claimants.

9. This Court considered the rival submissions and perused the materials available on record.

10. It is admitted that the claimant Parameswaran travelled in the goods vehicle as a load man. It is the bounden duty of the owner of the offending vehicle to pay additional premium for the Insurance coverage of the load man who is travelling in the goods vehicle. But no document has been filed on the side of the claimants to prove that additional premium was paid by the owner of the offending vehicle. Hence, it is held that there is no additional premium was paid for the load man who is travelling in the goods vehicle at the time of accident. Since, the said Parameswaran travelled in the goods vehicle as load man, when no additional premium was paid for load man, it amounts to violation of policy conditions. In cases of violation of policy conditions, the Court can direct the

Insurance Company to pay a compensation to the claimants at the first instance and recover it from the owner of the vehicle. Accordingly, this Court directs the Insurance company is to pay a compensation to the claimants and recover the same from the owner of the offending vehicle (i.e. first respondent).

11. In this case the Insurance Company also disputed the quantum of compensation awarded to the claimants and claimant Parameswaran filed C.M.A.(MD)No.278 of 2014 for enhancement of compensation. The lower Court awarded a sum of Rs.90,000/- to the claimant Parameswaran towards disability and loss of income but it is not reasonable. Hence, the amount awarded to Parameswaran towards disability and loss of income is raised to Rs.1,20,000/-. The compensation awarded to Parameswaran under all other heads is not disputed on the side of the Insurance Company. Hence, the compensation awarded towards pain and suffering, extra nourishment, transport charges and medical expenses by the Tribunal are confirmed. The compensation awarded by the Tribunal to claimant Jintha under various heads are also reasonable and hence the same are also confirmed.

12. In the result, these Civil Miscellaneous Appeals in C.M.A(MD)Nos.856 and 857 of 2009 and C.M.A(MD)No.278 of 2014 are partly allowed. The compensation awarded to the 1st respondent in C.M.A.(MD) No.856 of 2009/ appellant in C.M.A.(MD) No.278 of 2014 is enhanced from Rs.2,87,000/- (Rupees Two lakhs Eighty Seven Thousand only) to a sum of Rs.3,17,000/- (Rupees Three Lakhs and Seventeen Thousand Only). The enhanced compensation shall carry interest at the rate of 7.5% p.a. from the date of filing of the 1st respondent in C.M.A.(MD) No.856 of 2009/appellant in C.M.A.(MD) No.278 of 2014 till date of deposit. The compensation awarded to the first respondent in C.M.A.No.857 of 2009 is confirmed. The Insurance Company is directed to deposit the entire award amount with accrued interests and costs, within a period of eight weeks from the date of receipt of a copy of this order, if not already deposited and on such deposit being made and Insurance Company is at liberty to recover the award amount from the owner of the vehicle by filing appropriate proceedings before the Executing Court. The claimants are permitted to withdraw the entire award amount, with accrued interests and costs without filing any formal petition before the Tribunal. In all other respects award of the Tribunal are confirmed. No Costs.