IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED : 23.12.2016

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 2781 of 2016
and
CMP. No. 20158 of 2016

United India Insurance Co.Ltd.,
Third Party. Hub,
Sillingi building, No.134, Greams Road,
Murugesa Naicker Street,
Chennai-600 006. .. Appellant/2nd Respondent

Versus

1. Jayakumar
2. Subramani .. Respondents/Respondents

Appeasl filed under Section 173 of the Motor Vehicles Act, 1988 as against the decree and judgment dated 10.04.2015 made in M.C.O.P.No.4412 of 2012 on the file of Motor Accident Claims Tribunal (The IV Small Causes Court), Chennai.

For appellant : Mr.C.Paranthaman

For respondents : Mr.K.V.Muthu Visakan

J U D G M E N T

The appellant/Insurance Company has filed this Appeal challenging the quantum of compensation awarded in respect of injuries, sustained by the claimant, in the accident that occurred on 08.08.2012 and also its liability to pay the compensation.

2. The claimant, Jayakumar, aged 23 years, an auto driver by profession, who was said to be earning a sum of Rs.9,000/- per month, met with an accident on 08.08.2012 as a result of which, he sustained grievous injuries. Therefore, he filed a claim petition in M.C.O.P. No. 4412 of 2012 before the Motor Accident Claims Tribunal, Chennai, claiming a compensation in a sum of Rs. 6,00,000/-. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.4,52,000/- as

compensation, the break-up details of which are as under :

Disability	-	Rs.	90,000.00
Pain and suffering	-	Rs.	1,00,000.00
Extra Nourishment	-	Rs.	75,000.00
Transport to Hospital	-	Rs.	50,000.00
Damages to Clothes	-	Rs.	3,000.00
Attender charges	-	Rs.	40,000.00
Medical Expenses	-	Rs.	25,000.00
Loss of income	-	Rs.	39,000.00
Loss of Amenities	-	Rs.	30,000.00
Total		Rs.	4,52,000.00

Challenging the above award, the insurance company has filed the present appeal.

3. The main contention of the learned counsel for the Insurance Company is that even as per the hospital records, the claimant was under the influence of alcohol and, therefore, the question of contributory negligence arises. Therefore, the Tribunal was not justified in awarding the compensation as above and the same ought to have been proportionately reduced. It is further contended that when the driver of the 2nd respondent was not possessed of a valid driving licence and, therefore, the order of the Tribunal directing the insurance company to pay the compensation and permitting to recover the same from the owner of the vehicle, is per se not justified..

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

5. A perusal of the Accident Report reveals that the injured claimant was in an intoxicated condition. It is a generally accepted phenomenon that a person under the influence of alcohol is advised not to drive the vehicle as he would not be in control of his faculties to handle the vehicle/the situation in which he may find himself. In the case on hand, the claimant was under the influence of alcohol, stands established through the accident report and, therefore, the possibility of negligence on the part of the claimant cannot be ruled out. In such circumstances, without considering the factum of contributory negligence on the part of the claimant, fixing the responsibility on the driver of offending vehicle alone, belonging to the 2nd respondent, is not justified. The Tribunal ought to have taken the fact as revealed in the accident report in fastening the liability, which, in all probability would be contributory in nature. In such view of the matter, the

contention of the appellant that compensation should be reduced for the contributory negligence is wholly sustainable. Accordingly, this Court feels that an amount of Rs.1,00,000/= needs to be reduced from the total compensation awarded by the Tribunal towards contributory negligence. Apart from the contributory negligence, for which this Court has reduced the compensation, the award in other aspects cannot be said to be either exorbitant or unreasonable considering the nature of injuries suffered by the claimant and also the period of hospitalization. Accordingly, this Court modifies the compensation awarded by the Tribunal from Rs.4,52,000/- to Rs.3,52,000/-.

6. Insofar as the contention that the driver of the 2nd respondent was not possessed of a valid driving licence and, therefore, the directing the appellant to pay the compensation and recover the same from the owner of the vehicle is not justified is concerned, there is no second opinion that it is the liability of the insurer to pay the amount to the third party/claimant in case the vehicle in question has a valid insurance cover. It is not in dispute that the vehicle in question is covered by a valid insurance. However, the contention is that the driver of the 2nd respondent vehicle, which was insured with the appellant, not being possessed of a valid driving licence, the insurer/appellant is not liable to pay the compensation.

7. The Tribunal, relying upon the decision of this Court in United India Insurance Co. Ltd. - Vs - S.Saravanan & Anr. (2010 ACJ 2046), wherein it has been held that in case of third party risk, the insurer must pay the third party and then take a decision whether to proceed against the owner, which is in consonance with the essence and spirit of the Act and, therefore, directed the appellant to pay the compensation to the claimant and recover the same from the owner of the vehicle.

8. It is not in dispute that the insurance policy provides for cover for any accident that may happen during the period during which the policy is in force. The insurance policy further provides for covering the liability to compensate the victim in case of any accident caused by the insured vehicle. Therefore, the first leg of the policy mandates that the insured vehicle meeting with any accident, the victim of the accident is to be compensated in terms of the conditions of the policy. However, equally true it is that violation of the policy terms cannot be put against the insurer and it is the insured who is liable in such circumstances, the insured having accepted the terms and conditions of the policy, one of which is that the driver of the insured vehicle should be possessed of a valid driving licence. Therefore, for any violation of the insurance

terms, it is always open to the insurance company to proceed against the insured, but however, breach of the terms and conditions by the insured cannot in any way be put against the third party to claim his right to compensation under the policy. Therefore, the Tribunal was justified in directing the insurance company/appellant to pay the compensation to the claimant and, thereafter, to proceed against the insured in a manner known to law to recover the due, for violation of the terms and conditions of the policy and, therefore, no interference is called for with the finding of the Tribunal.

9. In the result, this appeal is allowed in part, reducing the compensation from Rs.4,52,000/- to 3,52,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to deposit the entire award amount as quantified by this Court above, less the amount, if any, already deposited, to the credit of M.C.O.P. No.4412 of 2012 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai, along with accrued interest within a period of three weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the amount on filing proper application. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. Motor Accident Claims Tribunal
(IV Small Causes Court)
Chennai.

2. The Section Officer
VR Section
High Court, Madras. (2 Copies)

+1cc to Mr.C.Paranthaman, Advocate in sr.no.75957
+1cc to Mr.K.V.Muthu Visakan, Advocate in sr.no.75975

C.M.A. No.2781 of 2016

MG(CO)
CS/14/02/18