IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.Nos.2671 to 2673 of 2016
and
CMP.Nos.19075, 19077 of 2016 and 49 & 7637 of 2017

CMA No.2671 of 2017
United India Insurance Co. Ltd.,
No.77, A.A.Street,
Oriental Theatre Complex, Salem-1
... Appellant/2nd Respondent

vs.

1. Kulandaivel ..1st Respondent/Claimant
2. Padma ...2nd Respondent/1st Respondents

CMA No.2672 of 2017
United India Insurance Co. Ltd.,
No.77, A.A.Street,
Oriental Theatre Complex, Salem-1
... Appellant/2nd Respondent

vs.

1. Sundarambal ..1st Respondent/Claimant
2. Padma ... 2nd Respondent/1st Respondent

CMA No.2673 of 2017
United India Insurance Co. Ltd.,
No.77, A.A.Street,
Oriental Theatre Complex, Salem-1
... Appellant/2nd Respondent

vs.

1. Kandasamy ..1st Respondent/Claimant
2. Padma ...2nd Respondent/1st Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the common Decree and Judgment dated 05.07.2016 in M.C.O.P.Nos.1435, 1436 and 1434 of 2014 respectively, passed by the Motor Accidents Claims Tribunal, (Special Sub Judge-1), Salem.

For Appellant : Mr.C.Paranthaman
in all CMAs

For Respondents: Mr.SP.Yuaraj (for R1)
in all CMAs

C O M M O N   J U D G M E N T

[Order of the Court was made by S.MANIKUMAR, J.]

Arising out of an accident which occurred on 04.08.2014, three claim petitions in MCOP Nos.1434, 1435 and 1436 of 2014, have been filed by the injured claiming compensation under various heads, before the MACT [Special Sub Judge-1], Salem.

2. As evidence adduced is common, the above three claim petitions were taken taken up together.

3. On analysis of the oral and documentary evidence, vide common judgment and decree in MCOP Nos.1434, 1435 and 1436 of 2014 dated 05.07.2016, the tribunal held that the driver of the autorickshaw bearing Reg.No.TN49-AC-9749, insured with M/s.United India Insurance Company Limited, was negligent in causing the accident and accordingly, fastened liability. However, considering that the driver of the auto rickshaw did not possess the required badge endorsement, the tribunal has directed the Insurance company to pay the award amount to the third party/claimants and recover the same from the owner of the autorickshaw.

4. Questioning the finding fixing liability on the appellant-Insurance company to pay compensation, instant appeals have been filed. Incidentally, quantum of compensation is also challenged. As all the three appeals arise out of a common judgment and decree, they are taken up together and disposed of by a common judgment.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. Though, Mr.C.Paranthaman, learned counsel for the appellant-Insurance company contended that tribunal erred in arriving at the conclusion that the accident happened due to the negligence of the driver of the auto rickshaw and also contended that the tribunal has failed to consider that one of the passengers/injured Kulandaivel, was sitting with the auto driver and therefore, the driver could not drive the auto carefully, and thereby the accident occurred, we are not inclined to accept the said contentions for the reason that the tribunal has fixed the negligence only after analysing oral and documentary evidence, in particular, evidence of PWs 1 to 3 and Ex.P1, FIR and Ex.P9, charge sheet laid against the driver of the autorickshaw, wherein, he was found guilty of

the charges and imposed penalty. Further, the Insurance Company has not proved their case, by examining any independent witnesses. Merely, because a person was seated next to the driver that alone cannot be said to sufficient to fix contributory negligence. Moreover, before arriving at the conclusion of negligence, the tribunal has taken note of the decisions in Oriental Insurance Co. Ltd., Vs. Anita and Others, reported in 2015 ACJ 143, National Insurance Co. Ltd., Vs. Pushpam, reported in 2014(1) TNMAC 418 and Branch Manager, New India Assurance Co. Ltd., Vs. Ekanathan, reported in 2014 (1) TNMAC 304 (DB). For the above reasons, we are not inclined to interfere with the finding fixing negligence on the driver of the auto rickshaw. On the aspect of liability, perusal of the award shows that the tribunal has found that the driver of the auto rickshaw did not posses the required badge endorsement, and has ordered 'Pay and Recover'.

7. On the challenge to the quantum, we have perused the compensation awarded in each of the claim petitions. Details of the claim in MCOP Nos.1434, 1435 and 1436 of 2014, and nature of injuries sustained, extent of disablement and quantum of compensation awarded in each of the claim petitions, are as hereunder.

CMA No.2671 of 2017 (MCOP No.1434 of 2014):
Nature of Injuries : simple head injury
Extent of Disability: NIL
Compensation awarded:

Loss of Income	: Rs. 6,000/-
Pain and suffering	: Rs. 10,000/-
Transportation	: Rs. 1,000/-
Extra Nourishment	: Rs. 1,500/-
Damages to clothes	: Rs. 500/-
Total	: Rs. 19,000/-

CMA No.2672 of 2017 (MCOP No.1435 of 2014):
Nature of Injuries : Amputation above knee (Left Leg)
Extent of Disability: 70%
Compensation awarded:

Loss of income [Rs.6,000/- x 12 x 14 x 70%]	: Rs. 7,05,600/-
Pain and suffering	: Rs. 1,50,000/-
Medical expenses	: Rs. 1,28,000/-
Future Medical Expenses for replacing the leg	: Rs. 50,000/-
Permanent disability	: Rs. 1,00,000/-
Loss of income during the period of treatment	: Rs. 36,000/-
Loss of amenities	: Rs. 1,00,000/-
Extra Nourishment	: Rs. 10,000/-
Attender Charges	: Rs. 50,000/-
Transportation	: Rs. 10,000/-

Damages to clothes	: Rs.	1,000/-
Total	: Rs.	13,40,600/-

CMA No.2673 of 2017 (MCOP No.1436 of 2014):
Nature of Injuries : Nose bone broken
Extent of Disability: 20%

Compensation awarded:

Disability compensation (Rs.3,000/- x 20)	: Rs.	60,000/-
Pain and suffering	: Rs.	25,000/-
Medical expenses	: Rs.	25,900/-
Loss of income for 3 months (Rs.6,000/- x 3)	: Rs.	18,000/-
Extra Nourishment	: Rs.	5,000/-
Attender Charges	: Rs.	10,000/-
Loss of amenities	: Rs.	20,000/-
Transportation	: Rs.	5,000/-
Damages to clothes	: Rs.	600/-
Total	: Rs.	1,69,500/-

8. We do not find any infirmity in the award and the compensation awarded in each of the claim petitions appears to be just and reasonable. We are of the considered view the the same does not require any reduction.

9. Hence, the finding of negligence fixed on the driver of the auto rickshaw and the quantum of compensation awarded to the injured in each of the claim petitions are confirmed. The Civil Miscellaneous Appeals are dismissed. No Costs.

10. Record of proceedings shows that while entertaining the appeals vide order dated 10.01.2017 in CMP Nos.19075 & 19077 of 2016 and 49 of 2017, this Court granted interim stay on condition that the appellant Insurance Company deposits 50% of the award amount in each of the claim petitions, together with interest, less the statutory deposit. Seeking withdrawal of the amount deposited in CMA No.2671 of 2017, injured has filed CMP No.7637 of 2017.

11. Consequent to the dismissal of the appeals, appellant-Insurance company is directed to pay the balance of the award amount with proportionate interest and costs, in

each of the claim petitions within a period of three weeks from the date of receipt of a copy of this order. On such deposit, the injured/claimant in each of the claim petitions, is permitted to withdraw the award amount with proportionate interest and costs, less the amount already withdrawn, if any, by making proper applications. The connected Civil Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ars

To
The Special Sub Judge-1,
Motor Accidents Claims Tribunal,
Salem.

+3cc to Mr.C,Paranthaman,Advocate sr.40861

+1cc to Mr.S.P.Yuaraj,Advocate sr.41814

C.M.A.Nos.2671 to 2673 of 2016
and CMP.Nos.19075, 19077 of
2016 and 49 & 7637 of 2017

gr(co)
ss(14/7/2017)