IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.Nos.2416 and 2417 of 2014
and M.P.Nos.1 and 1 of 2014

Reliance General Insurance Co. Ltd.,
Lakshmi Complex,
Near A.N.S.Jewellery,
Swarnapuri, Salem – 4.
... Appellant in both C.M.As (2nd Respondent)

versus

K.Santhi
… 1st respondent in C.M.A.No.2416/2014(Claimants)
S.Kandasamy
… 1st respondent in C.M.A.No.2417/2014(Claimants)
S.Kumar
… 2nd respondent in both C.M.As.(1st Respondent)

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.07.2009 made in M.C.O.P.Nos.363 and 364 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant in both C.M.As. : Mr.N. Vijayaraghavan

For Respondent : Mr.Ma.P. Thangavel for R1 in each of the CMAs

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company against the Judgment and Decree dated 10.07.2009 made in M.C.O.P.Nos.363 and 364 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri.

2. On 03.07.2008, one Santhi along with her husband, viz., Kandasamy were proceeding in their two-wheeler, namely, TVS 50 bearing Reg.No.TN30U 7666, on the Salem-Bhavani Main Road, towards Sankari. When they were going on the left side of the road nearing the School, viz., K.R.P. School at a low speed, at that time, the vehicle, bearing Reg.No.TN30AA 8149, which came

from behind the two-wheeler, driven by its driver in a rash and negligent manner, dashed against the TVS 50, due to which, the rider and the pillion rider of TVS 50 were thrown out from the vehicle and they sustained grievous injuries. Hence, they filed claim petition separately before the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri, claiming compensation of Rs.5,00,000/- each.

3. The Tribunal, after considering the oral and documentary evidence, has awarded the compensation as tabulated hereunder:

Sl. No.	Heads	M.C.O.P.No.363 of 2008 (Rs.)	M.C.O.P.No.364 of 2008 (Rs.)
1	Loss of income	1,91,100/-	2,64,000/-
2	Injuries	34,000/-	Nil
3	Pain and sufferings	Nil	10,000/-
4	Extra nourishment	15,000/-	7,500/-
5	Transport Expenses	7,500/-	5,000/-
6	Loss of income	31,500/- (for 9 months)	30,000/- (for 6 moths)
7	Medical expenses	31,367/-	65,592/-
8	Loss of comfort	5,000/-	5,000/-
	Total	3,15,467/-	3,87,092/-

Challenging the quantum of compensation as excessive, the Insurance Company has filed these appeals.

4. The learned counsel appearing for the appellant Insurance Company submitted that the driver of the offending vehicle was not in possession of a valid driving licence and that the driving licence had expired nearly one year prior to the accident and, therefore, the insurance company cannot be made liable to pay compensation. He further submitted that when there was no proof for the income and permanent loss of income, the Tribunal has erroneously fixed the income and adopted the multiplier method, which is not justified. Further, the Tribunal has awarded compensation under other heads, which are also not in consonance with the ratio laid down in various decisions. Hence, the award has to be reduced in both the claim petitions.

5. Insofar as the contention raised by the appellant that the driver of the vehicle was not in possession of a valid driving licence is concerned, a perusal of the award passed by the Tribunal reveals that on the side of the claimants, Ex.P9 - a xerox copy of the driving licence of the driver, viz., Kumar has been marked, which shows that the Driver had valid driving licence at the time of accident. The Tribunal also, considering

the evidence of P.W.1, Santhi and P.W.2, Kandasamy and the documents, viz., Ex.P1-First Information Report, Exs.P4 and P5-Motor Vehicle Inspector's report, Ex.P6 - Rough Sketch, Ex.P7-Charge Sheet, Ex.P8-Decree copy and Ex.P9-driving licence, came to the correct conclusion that the driver of the offending vehicle drove his vehicle in a rash and negligent manner and hence, the accident had happened. It was the contention of the learned counsel for the Insurance Company that the offending vehicle was a goods vehicle and the driver of offending vehicle neither possessed a valid driving licence nor badge for the goods vehicle. In order to enquire about the driving licence, the Insurance Company also sent a notice Ex.R3 to the owner of the vehicle and the same was received by the owner of the vehicle. As the owner did not come forward to produce the the requisite documents, the Insurance Company was not liable to pay compensation. Though such a contention was raised, the Tribunal held that as the claimants are third parties, the Insurance Company is liable to pay compensation, but granted liberty to the insurer to recover the same from owner of the vehicle.

6. From a careful perusal of the order passed by the Tribunal, it is evident that the negligence was on the driver of the offending vehicle and, therefore, the Tribunal has rightly concluded that the driver of the offending vehicle was at fault. Therefore, the finding of the Tribunal that the accident had occurred due to the rash and negligent driving of the driver of the vehicle is based on documentary evidence and reasoning and is liable to be sustained.

7. Insofar as the contention the the order of the Tribunal directing the Insurance Company to pay compensation and recover the same from the owner of the vehicle is concerned, a perusal of the documents available on record as also the reasoning given by the Tribunal shows that the Tribunal has appreciated the records in its proper perspective and has given a finding. The Tribunal has held that the driver of the offending vehicle was in possession of a driving licence, though it had expired. The driver was also not in possession of the badge as is required for driving a goods vehicle. In such view of the matter, as the insurance policy covers third party liability, the insurer was held liable to pay the compensation, however, granting liberty to recover the same from the owner of the vehicle. The said finding of the Tribunal is justified and no interference is warranted.

8. In M.C.O.P.No.363 of 2008, the claimant was aged 48 years and she was an agriculturist and doing milk vending. The Tribunal based on the Discharge summary, wherein, the claimant's age was shown as 48 years, fixed the age of the claimant at 48 years. There being no proof for income of the claimant, the Tribunal has fixed the monthly income of the claimant at

Rs.3,500/-. The claimant had sustained fracture over right shoulder, upper jaw, spinal cord, rib bones, and injuries over the head and all over the body. The claimant has also produced Ex.P16-disability certificate, wherein, the disability has been assessed at 35%. Hence, the Tribunal, by adopting the multiplier method, quantified the loss of income at Rs.1,91,100/- (Rs.3,500 x 12 x 13 x 35%) . Further, the Tribunal, by considering the nature of injuries, i.e., six injuries being grievous in nature and four injuries being simple in nature, has awarded a sum of Rs.5,000/- for grievous injuries and Rs.4,000/- for simple injuries and totally awarded Rs.34,000/- towards injuries.

9. Insofar as the compensation under other heads are concerned, the Tribunal, considering the nature of injuries, period of treatment, impact of the injuries sustained on the earning capacity of the claimant, awarded a sum of Rs.15,000/- towards extra nourishment, Rs.7,500/- towards transport expenses, Rs.31,500/- towards loss of income for 9 months and Rs.31,367/- towards medical expenses as per the bills and Rs.5,000/- towards loss of comfort.

10. In M.C.O.P.No.364 of 2008, the claimant was aged 53 years, but, in the Discharge summary, the claimant's age was shown as 54 years, hence, the Tribunal has fixed the age of the claimant at 54 years. The claimant was an agriculturist and also a driver and earning a sum of Rs.10,000/-. However, there being no proof for income of the claimant, the Tribunal has fixed the monthly income of the claimant at Rs.5,000/- (i.e. Rs.4,000/- for agricultural work and Rs.1,000/- for driving work). The claimant had sustained fracture of thigh bone over the right leg, for which, the injured underwent a surgery, in which, implant has been made. Hence, there was a restriction of movement over the knee. Due to the injuries sustained by the claimant, he could not walk, run, climb the steps and raise his hands as before. Hence, the Doctor has assessed the disability at 40%. Considering the same, the Tribunal, by adopting the multiplier method, quantified the loss of income at Rs.2,64,000/- (Rs.5,000 x 12 x 11 x 40%) .

11. Insofar as the compensation under other heads, the Tribunal, considering the nature of injuries, period of treatment, impact of the injuries sustained on the earning capacity of the claimant, awarded a sum of Rs.10,000/- towards pain and sufferings, Rs.7,500/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.30,500/- towards loss of income for 6 months and Rs.65,592/- towards medical expenses as per the bills and Rs.5,000/- towards loss of comfort.

12. On a careful perusal of the compensation awarded under various heads in both the claim petitions is concerned, the Tribunal, on the basis of cogent and convincing reasoning has awarded the said sum and, therefore, the compensation awarded cannot be said to be excessive. Further, the compensation awarded towards disability is also based on materials available on record and the compensation is also just and reasonable. Therefore, this Court is of the considered opinion that no interference is warranted with the award passed by the Tribunal and the same is liable to be confirmed.

13. Accordingly, both the Civil Miscellaneous Appeals are dismissed, confirming the award dated 10.07.2009 made in M.C.O.P.Nos.363 and 364 of 2008 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sankagiri. The appellant/insurance company is granted liberty to recover the amount of compensation from the owner of the vehicle, as ordered by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

14. The Insurance Company is directed to deposit the entire amount of compensation awarded by the Tribunal, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit to the credit of the respective claim petition, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the same directly to the Bank Account of the respective claimant through RTGS within a period of two weeks thereafter.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To
1. The Motor Accident Claims Tribunal,
Subordinate Court, Sankagiri.
Copy to
The Section Officer, VR Section,
High Court, Madras.
+1 CC to Mr.Ma.P. Thangavel, Advocate sr 1542

VD(CO)
SP(27/03/2018)