

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.393 of 2017 and C.M.P.No.2796 of 2017

The Branch Manager,
M/s.Iffco Tokio General Insurance
Company Limited,
No.335/1-A, V.V.Complex,
North By-Pass Road,
Vannarpettai, Tirunelveli. ...Appellant/3rd Respondent

versus

1. Thirumalaisamy ... 1st Respondent/Petitioner
2. M.Mugandan ... 2nd Respondent/1st Respondent
3. G.Murugan ... 3rd Respondent/2nd Respondent
(R2 and R3 remained ex parte
before the Tribunal)

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 26.02.2013, made in M.C.O.P.No.1499 of 2010 on the file of the Motor Accident Claims Tribunal, Second Additional District and Sessions Court, Tiruppur.

For Appellant: Mr.M.B.Gopalan

JUDGMENT

The claimant Thirumalaisamy, aged about 60 years, an Idly flour seller, earning a sum of Rs.200/- per day, met with an accident on 06.12.2010 and sustained injuries, in respect of which, he filed a claim petition in M.C.O.P.No.1499 of 2010 before the Motor Accident Claims Tribunal, Second Additional District and Sessions Court, Tiruppur, claiming compensation of Rs.5,00,000/-.

1.1. As against the claim made, the Tribunal, after considering the oral and documentary evidence, has awarded a sum of Rs.2,10,000/- as compensation, payable by the Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Loss of income	-	Rs.1,35,000/-
Pain and sufferings	-	Rs. 40,000/-
Medical expenses	-	Rs. 15,000/-
Transport and extra nourishment	-	Rs. 10,000/-
Loss of comfort	-	Rs. 10,000/-
Total	-	Rs.2,10,000/-

1.2. Challenging the liability and quantum of compensation, the Insurance Company has filed this appeal.

2. The learned counsel appearing for the appellant Insurance Company would submit that the Tribunal has erred in ordering the appellant to pay compensation and recover the same from the owner, despite clear proof of violation of policy by entrusting vehicle to an unlicensed driver; the Tribunal failed to appreciate that the breach was substantial and hence, the Tribunal should have exonerated the Insurance Company (in law and on facts); the quantum of compensation awarded by the Tribunal is excessive, hence the amount has to be reduced.

3. According to the Insurance Company, the driver of the two wheeler did not produce driving license during enquiry. Despite the request made, the same was not produced and hence, adverse inference has to be drawn. It is further contended that, as there is no valid driving licence, there is a violation of policy condition and therefore, the Insurance Company should be exonerated from the liability to pay compensation.

4. As far as the liability is concerned, the Tribunal, contextually, has relied upon the following two judgments:

(i) 2010 (6) CTC 739 (New India Assurance Co. Ltd., Thiruchirappalli vs. Kavitha and others) - contention that driver of offending vehicle did not possess a valid licence to drive school bus, without an endorsement by Licencing Authority - Motor Vehicles Act is a piece of beneficial legislation - Aim and purpose of Act cannot be defeated by Insurance Company, on a technical ground - even in case of violation of policy conditions, victim being an innocent person, should not be made to suffer - Injured or relatives of deceased, should not go with mind that decree is merely a paper decree - concept of pay and recover can be applied to grant relief to claimants.

(ii) 2010 (8) MLJ 422 (United India Insurance Co. Ltd., Salem vs. Vijayakumar, rep. by his mother Kalamani and others), wherein, it has been held that the Court may in its discretion direct the Insurer to pay first and order recovery in the facts and circumstances of each case.

Following the above, the Tribunal has directed the Insurance Company to pay compensation and recover the same from the owner of the vehicle.

5. This is a case where the accident had taken place while the injured had been walking at Pollachimeenkarai Road and hit by the vehicle insured with the appellant. So far as the claimant is concerned, he is the third party. Rightly the Tribunal has applied the decisions referred supra and has fixed the liability on the part of the Insurance Company with the safeguard of recovering the compensation from the owner. As the violation of terms and conditions of the policy has been ordered to be set right by giving the right of recovery, the award cannot be said to be incorrect.

6. So far as the quantum of compensation is concerned, the Tribunal has taken note of the following factors:

The claimant has suffered fracture of both the bones in the left leg; the claimant has suffered loss of muscles; implant has been used during surgery; there is a shortage of muscles to the extent of 2 cms; shortening of leg to the extent of 1 cm; malunion of bones. Considering the nature of job and the impact of disablement upon the earning capacity, the Tribunal has adopted multiplier method of quantification, considering the functional disability also at 45%. The Tribunal has taken the monthly income of the injured at Rs.5,000/-; in respect of 45% disablement, the loss of income has been quantified at Rs.1,35,000/- (Rs.5,000 x 12 x 45% x 5); awarding compensation towards pain and sufferings at Rs.40,000/-, Rs.15,000/- towards medical expenses, Rs.10,000/- towards transport and extra nourishment; Rs.10,000/- towards loss of comfort, the total compensation has been quantified at Rs.2,10,000/-. The award under each of the heads is reasonable. Hence, the appeal is liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 26.02.2013, passed in M.C.O.P.No.1499 of 2010 by the Motor Accident Claims Tribunal, Second Additional District and Sessions Court, Tiruppur.

8. The Insurance Company is directed to deposit the compensation awarded by the Tribunal, less the amount already deposited if any, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant is permitted to withdraw the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Second Additional District and Sessions Court,
Tiruppur.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai.

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