

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

C.M.A.No.66 of 2017

Ramayee

... Appellants

.Vs.

1. A.Ponnuvel

2. The Shri Ram General Insurance Company
Limited, No.10003, E.8, Epip, RIICO
Industrial Area, Sitapura, Jaipur,
Rajasthan-302 202.

... Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.11.2014 in MCOP.No.118 of 2013 on the file of the Motor Accidents Claims Tribunal/Sub Court at Gobichettipalayam.

For Petitioner : Mr.MA.P.Thangavel

For 2nd Respondent : Mr.S.Dakshinamoorthy

For 1st Respondent : Set ex-parte before Tribunal

J U D G M E N T

Challenging the quantum of compensation awarded by the Subordinate Judge, Motor Accidents Claims Tribunal, Gobichettipalayam, in M.C.O.P.No.118 of 2013, dated 03.11.2014, the claimant has come forward with this Civil Miscellaneous Appeal for enhancement of compensation.

2. On 23.04.2013, at about 14.00 hours, when the petitioner was proceeding towards the Mariamman Temple at Akkichettipalayam, a TATA Ace Van bearing Registration No.TN 30 AZ 6987 which came behind her, in a rash and negligent manner, at a high speed, without observing the traffic rules, dashed against the petitioner and caused the accident. Due to the said impact, the petitioner sustained grievous injuries over her

right leg, head and injuries over her right elbow, left knee, chest and multiple abrasions all over her body. Hence, the claimant filed a claim petition in M.C.O.P.No.118 of 2013, seeking compensation for a sum of Rs.4,00,000/-.

3. The Tribunal, on consideration of oral and documentary evidence, has awarded a sum of Rs.1.08,000/-, with interest @ 7.5% per annum from the date of petition till the date of deposit.

4. The break-up details of the same are as follows:

1. Permanent Disability	- Rs. 60,000
2. Partial loss of earnings	- Rs. 18,000
3. Transportation	- Rs. 5,000
4. Extra Nourishment	- Rs. 5,000
5. Attendant Charges	- Rs. 5,000
6. Pain and Sufferings	- Rs. 10,000
7. Mental Agony and Shock	- Rs. 5,000

Total award of compensation	Rs.1,08,000

5. The learned counsel for the Claimant would contend that the amount of compensation awarded by the Tribunal is very low and the same needs to be enhanced. He would further submit that the tribunal was not correct in holding that the rider of the motor cycle was not having valid driving licence on the basis of the oral evidence of RW1 without calling for necessary report from the RTO's office. He has also submitted that the Tribunal has not considered the fact that the alleged violation of policy relate to the contract between the insurance Company and the owner of the vehicle for which the claimant cannot be penalized and therefore he prays to direct the Insurance Company to deposit the entire award amount with a direction to recover the same from the owner of the vehicle.

6. A perusal of the award would go to show that no documentary evidence was produced to show the monthly income of the claimant and hence, the tribunal has correctly fixed the monthly income of the claimant at Rs.3,000/- and awarded a sum of Rs.18,000/- towards partial loss of earnings which is reasonable. Likewise, for the disability of 40% sustained by the claimant, the Tribunal has awarded a sum of Rs.60,000/-, which is also reasonable. Further, the compensation awarded under other heads, namely, Transport to Hospital, Extra Nourishment, Attender Charges, Pain and Sufferings and Mental Agony and Shock are also reasonable, which do not warrant any interference.

7. The Hon'ble Supreme Court, in a case of National Insurance Company Ltd., Vs. Swarn Singh, reported in 2004 (1) TNMAC 104 (SC) has taken note of various decisions including that of the decision in Sohan Lal Passi V. P.Sesh Reddy reported in 1996 (5) SCC 21, and their Lordships held as follows:

"102. The summary of our findings to the various issues raised in these petitions are as follows:

(iv) The Insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle, the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149 (2) of the Act.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be

reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of the claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal."

8. In the instant case, the rider of the vehicle has no valid driving license. Mere absence or invalid licence or disqualification of driver are not the defences available to the insurer, either the insured or their parties. The burden is on the insurer to prove that the insured was guilty of negligence and failed to exercise reasonable care in fulfilling the policy conditions regarding use of vehicle by licensed driver. The insurance company has not established the breach on the part of the insured.

9. The Motor Accident Claims Tribunal failed to apply the principles laid down by the Hon'ble Supreme Court in the decision referred supra. In Paragraph 99 of the decision of the Hon'ble Supreme Court in National Insurance Co.Ltd. Vs. Swaran Singh & others reported in 2004 (1) TNMAC 104 SC, it is held as follows:

"99. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, regard to provisions of Sections 165 and 168 of the Act. However, in the event, having

regard to the limited scope of inquiry in the proceedings before the Claims Tribunal it had not been able to do so, the insurance company may initiate a separate action therefore against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for reason or the other, the insurer was not given opportunity to defend at all. Such a course of action may also be resorted when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to knowledge of the insurer at a later stage."

10. Considering the same, the Insurance Company is directed to deposit the award amount as granted by the Tribunal and recover the same from the owner of the vehicle.

11. In the result, this appeal is partly allowed confirming the Judgment and decree of the Claims Tribunal, in M.C.O.P.No.118 of 2013, on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Gobichettipalayam. The Insurance Company is directed to deposit the entire award amount, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle i.e. the first respondent herein. Further, the claimant is permitted to withdraw the award amount with interest. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsi/mst

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Gobichettipalayam.

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No.16882
+1cc to Mr.S.Dakshinamoorthy, Advocate, S.R.No.16818

C.M.A.No.66 of 2017

VSN(CO)
CA(12/04/2017)