IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.1254 to 1257 of 2015

M/s.United India Insurance Co. Ltd.,
Silingi Building,
No.134, Greams Road,
Chennai 600 006. .. Appellant/2nd Respondent in all C.M.As.

Vs.

D.Periyanayagi .. 1st Respondent/Claimant in C.M.A.No.1254/2015

R.Ponnarasi .. 1st Respondent/Claimant in C.M.A.No.1255/2015

R.Jennifer .. 1st Respondent/Claimant in C.M.A.No.1256/2015

D.Rajan .. 1st Respondent/Claimant in C.M.A.No.1257/2015

R.Gajalakshmi .. 2nd Respondent/1st Respondent in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.09.2014 made in M.C.O.P.Nos.2211 to 2214 of 2010 on the file of the VI Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Ms.C.Harini
for Mr.M.B.Gopalan
(in CMA Nos.1254,1256,1257/2015)
MR.R.NEETHIPERUMAL, for
CMA No.1255/2015

For R1 : Mr.A.A.Venkatesan
(in all C.M.A.Nos.1255 to 1257/2015)

For R2 : No appearance (in all C.M.As.)

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

These Civil Miscellaneous Appeals have been filed challenging the compensation awarded by the Tribunal in the order dated 19.09.2014 made in M.C.O.P.Nos.2211 to 2214 of 2010 on the file of the VI Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai.

2.Since all the appeals are arising out of the same accident, they are disposed of by this common judgment.

3.The appellant is the 2nd respondent in M.C.O.P.Nos.2211 to 2214 of 2010 on the file of the VI Court of Small Causes, (Motor Accidents Claims Tribunal), Chennai. The 1st respondents/claimants filed the said claim petitions, claiming a sum of Rs.2,50,000/-, Rs.2,50,000/-, Rs.2,50,000/- and Rs,1,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 02.05.2010.

4.The Tribunal considering the pleadings, oral and documentary evidence and taking note of the fact that four persons travelled in the auto at the time of accident, while the seating capacity is only three, directed the appellant, as insurer of the vehicle belonging to the 2nd respondent, to pay a sum of Rs.1,95,000/-, Rs.2,16,000/-, Rs.2,16,000/- and Rs.25,000/- respectively, as compensation for three passengers/1st respondent in C.M.A.Nos.1254 to 1256/2015 and ordered pay and recovery in respect of 4th passenger/1st respondent in C.M.A.No.1257/2015. The Tribunal, considering the age, avocation of the deceased, nature of injuries and the treatment taken by the injured claimants, awarded compensation.

5.Against the said award dated 19.09.2014 made in M.C.O.P.Nos.2211 to 2214 of 2010, the appellant-Insurance Company has come out with the present appeals.

6.The learned counsel appearing for the appellant contended that the Tribunal erred in fixing the entire liability on the appellant. The Tribunal having held that the 2nd respondent owner of the vehicle violated the permit policy condition, ought to have exonerated the Insurance Company. Pay and recovery of compensation ordered as regards 4th claimant/1st respondent in C.M.A.No.1257/2015, is erroneous. The claimants have exaggerated the injuries and amounts awarded is excessive. In support of her contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in 2007 ACJ 2129 [National Insurance Co. Ltd., Vs. Anjana Shyam and others], wherein in paragraph No.16, it is held as follows:

> "16.Then arises the question, how to determine the compensation payable or how to quantify the

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compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately."

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7.Per contra, the learned counsel for the 1st respondent in all C.M.As. contended that the accident occurred only due to the rash and negligent driving by the driver of the auto belonging to the 1st respondent. The Tribunal considering the evidence let in by the 1st respondents/claimants, held that the accident occurred only due to the rash and negligent driving by the driver of the auto belonging to the 1st respondent. The Tribunal considering various judgments, has rightly held that the appellant-Insurance Company cannot be exonerated and made liable to pay compensation and prayed for dismissal of the appeals.

8.Heard the learned counsel for the appellant-Insurance Company as well as the 1st respondent in C.M.A.Nos.1255 to 1257 of 2015 and perused all the materials available on record.

9.From the materials on record, it is seen that in the counter statement, the appellant-Insurance Company has contended that 7 persons travelled in the auto. The said contention was not substantiated before the Tribunal. The Tribunal considering the materials on record, concluded that four persons travelled in the auto at the time of accident. The seating capacity is only three and one person travelled in the auto in excess of permitted seating capacity. Considering the judgment of this Court and the Hon'ble Apex Court, the Tribunal has held that in the facts and circumstances of the case, the appellant-Insurance Company cannot be exonerated from its liability to pay the compensation. The Tribunal has rightly directed the appellant to pay the compensation to three passengers and ordered pay and recovery in respect of fourth passenger and has given cogent and valid reason for the same. Considering all the materials available on record in entirety, this Court is of the considered view that the award of the Tribunal is not perverse, warranting interference by this Court.

10.As far as the quantum of compensation is concerned, in M.C.O.P.No.2211 of 2010 (C.M.A.No.1254 of 2015), the Tribunal has awarded a sum of Rs.1,95,000/- as compensation under various grounds. In M.C.O.P.No.2214 of 2010 (C.M.A.No.1257 of 2015), the Tribunal has awarded a sum of Rs.25,000/- as compensation. The Tribunal has considered the evidence let in by the 1st respondent in both the claim petitions properly and awarded compensation. The amounts awarded by the Tribunal is just compensation and does not warrant any interference by this Court.

11.As far as C.M.A.Nos.2212 and 2213 of 2015 are concerned, the Tribunal has awarded excess amount under the following heads:

(i)Transportation, extra nourishment & damages to clothes
(ii)Pain and suffering and
(iii)Loss of amenities

Hence, they are reduced to Rs.20,000/-, Rs.20,000/- and

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Rs.10,000/- respectively in both the appeals. The amounts granted by the Tribunal under all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal in C.M.A.Nos.1255 and 1256 of 2015 are modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability of 30%	90,000/-	90,000/-	confirmed
2.	Pain and suffering	40,000/-	20,000/-	reduced
3.	Attender charges	1,000/-	1,000/-	confirmed
4.	Transport charges, extra nourishment & damage to clothes & articles	40,000/-	20,000/-	reduced
5.	Loss of income for 4 months	18,000/-	18,000/-	confirmed
6.	Loss of amenities	25,000/-	10,000/-	reduced
7.	Medical expenses	2,000/-	2,000/-	confirmed
	Total	2,16,000/-	1,61,000/-	Reduced by Rs.55,000/-

11.In the result, C.M.A.Nos.1254 and 1257 of 2015 are dismissed and the compensation of Rs.1,95,000/- and Rs.25,000/- respectively granted by the Tribunal are confirmed. C.M.A.Nos.1255 and 1256 of 2015 are partly allowed and the compensation granted by the Tribunal in both the appeals are modified to Rs.1,61,000/-. The appellant-Insurance Company is directed to deposit the compensation of a sum of Rs.1,95,000/-, Rs.1,61,000/-, Rs.1,61,000/- and Rs.25,000/- along with interest and costs, to the credit of M.C.O.P.Nos.2211 to 2214 of 2010 respectively, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. In C.M.A.No.1257 of 2015 (M.C.O.P.No.2214 of 2010), the appellant-Insurance Company is permitted to recover the

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award amount from the 2nd respondent. On such deposit, the claimants/1st respondent in all the C.M.As. are permitted to withdraw the entire award amount respectively, with interest and costs, after adjusting the amount, if any withdrawn already, by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

To

The VI Judge,
Court of Small Causes,
(Motor Accidents Claims Tribunal), Chennai.

Copy To:
The Section Officer,
V.R.Section, High Court, Madras.

+4 cc's to Mr.M.B.Gopalan, Advocate SR.No.84662 to 84665
+1 cc to Mr.a.A.Venkatesan, Advocate SR.No.83452

CMA.Nos.1254 to 1257 of 2015

EV(CO)
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