

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
and  
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.3328 of 2013 & MP 1 of 2013  
Cross Objection No.73 of 2017

Reliance General Insurance Company Ltd.,  
Having Coimbatore Branch Office,  
At 1<sup>st</sup> floor, Geejay Arcade,  
141/71, T.V. Samy Road (West)  
R.S.Puram, Coimbatore 641 002.

... Appellant in CMA 3328/13 &  
1<sup>st</sup> Respondent in Cross Obj. No.73/2017/  
3<sup>rd</sup> Respondent  
-vs-

1. A.Susai Philamin Raj ... 1<sup>st</sup> Respondent in CMA 3328/13  
Cross Objector in Cross Obj No.73/17/  
Petitioner
2. P. Vincent
3. Chandrasekaran ... Respondents 2 & 3 in CMA 3328/13 &  
Cross Obj No.73/17/1 & 2 Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 18.03.2013 made in MCOP. No.1720 of 2012, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore.

Cross Objection filed under Order 41 Rule 22 of the Civil Procedure Code, to enhance the compensation amount awarded in the Judgment and decree dated 18.03.2013 made in MCOP. No.1720 of 2012, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Coimbatore.

For Appellant in CMA 3328/13 : Mr.S.Arun Kumar  
& 1<sup>st</sup> Respondent in Cross Obj. No.73/2017

For 1<sup>st</sup> Respondent in CMA 3328/13 : Mr. N.E.A. Dinesh  
Cross Objector in Cross Obj No.73/17 for M/s.V.Nicholas

R2 & R3

: N.A.

## J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The challenge in the appeal filed by the Insurance Company is to the award of the Tribunal granting a sum of Rs.20,83,320/- for the injuries caused to the 1<sup>st</sup> respondent in the motor accident occurred on 29.05.2008. The claimant has also filed cross-objection in Cross Objection No.73 of 2017 seeking enhancement of the compensation.

2. According to the claimant, while he was riding his Motor Cycle bearing Registration No.TN 37 AR 1985 from east to west and took a turn towards north, a Tata Indica Car, bearing Registration No.KL 06 D 7647, owned by the 3<sup>rd</sup> respondent and insured with the appellant Insurance Company, came in the opposite direction and dashed against the two wheeler. As a result of the accident, the claimant/1<sup>st</sup> respondent suffered head injury and fracture in the spinal cord, resulting in 100% permanent disability. Claiming that he was earning about Rs.20,000/- per month before the accident and that he had also incurred huge expenses towards the surgeries, the claimant sought for a compensation of Rs.20,00,000/-.

3. The Insurance Company resisted the claim contending that there was no insurance cover as on the date of the accident, the manner in which the accident occurred was also disputed by the Insurance Company. The quantum of compensation claim was termed as excessive and the monthly income claim was also disputed.

4. The Tribunal, which heard the Original Petition, concluded that the accident occurred due to the rash and negligent driving of the car. In coming to the said conclusion the Tribunal relied upon Ex.P1 - FIR, Ex.P2 - Rough Sketch, Ex.P3 - the Accident Register and Ex.P5 - Charge Sheet.

5. On the quantum, the Tribunal concluded that the injuries caused particularly fractures in the spinal card had resulted in a partial permanent disability at about 75%. The said conclusion of the Tribunal was based on the evidence of P.W.2 and P.W.3 Doctors who treated the 1<sup>st</sup> respondent/claimant and the discharge summaries that were filed as Exs.P7, P8, P9 and P10. The Tribunal took the monthly income of the deceased, notionally, at Rs.7,000/- and adopting a multiplier of 7 arrived at the loss of earning capacity at Rs.8,19,000/- for the partial permanent disability assessed at 75%. The Tribunal awarded a sum of Rs.10,000/- towards transport to hospital, Rs.10,000/- towards extra nourishment, Rs.20,000/- towards pain and suffering, Rs.12,24,320/- towards medical expenses as evidenced by medical bills. Thus in all the Tribunal awarded a sum of Rs.20,83,320/-.

6. The Tribunal also concluded that there was a dispute regarding the fact as to whether the policy of insurance was in force on the date of the accident. According to the Insurance Company, the earlier Policy taken by the 3<sup>rd</sup> respondent covered the period between 03.03.2007 and 29.03.2008 and the same was not renewed immediately. Another Policy was taken for the period from 01.06.2008 to 31.05.2009. Therefore, according to the Insurance Company, there was no contract of the Insurance, subsisting, on the date of the accident i.e. 29.05.2008 hence it cannot be made liable to pay the compensation.

7. The Tribunal examined the documents produced particularly Ex.R2 cover note as well as the copy of another cover note said to have been produced before R.T.O. by the insurer and concluded that the Insurance Company has failed to prove its plea of absence of insurance. The Tribunal took note of the difference in hand writing between Exs.R2 and R3. The Tribunal also took into account that the Insurance Company had admitted the existence of a contract of insurance and had subsequently chosen to deny the same. The Tribunal thus directed the Insurance Company to pay the compensation with liberty to recover the same through appropriate legal proceedings.

8. We have heard Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company and Mr.N.E.A.Dinesh, learned counsel appearing for the 1<sup>st</sup> respondent/claimant. Respondents 2 and 3, who are the driver and owner of the offending vehicle, namely Tata Indica Car, have not chosen to appear, despite notice.

9. Mr.S.Arun Kumar, learned counsel appearing for the Insurance Company would submit that the Tribunal erred in placing the burden of proving absence of Insurance Cover on the Insurance Company. He would contend that the insured will have to prove the subsistence of the contract of the Insurance in order to avail the indemnity. Mr.S.Arunkumar, would also point out that the Tribunal having found that the existence of the contract of insurance is in doubt, erred in directing the Insurance Company to pay the compensation with liberty to take appropriate proceedings for recovery. According to him, the Tribunal should have allowed the Insurance Company to seek recovery in the very proceeding itself by seeking execution of the award against the insured.

10. Per contra Mr.N.E.A.Dinesh, learned counsel appearing for the claimants would contend that though Ex.R2, cover note would show that the insurance was to commence from 01.06.2008 and end on 31.05.2009. The cover note produced by the insured before the R.T.O. would show that the insurance would commence

on 27.05.2008 and end on 28.05.2009, therefore, according to him there is considerable doubt regarding the subsistence of the policy on the date of the accident.

11. Mr.S.Arun Kumar, would submit that the Insurance Company had made a compliant regarding the absence of cover and the fraud played by the insurer in altering the cover note. He also submits that the FIR has been registered against the owner of the vehicle in FIR No.63 of 2013 and the same is pending investigation.

12. We have considered the rival submissions.

13. We find that there are two cover notes bearing the same number. The cover note produced as Ex.R2 by the Insurance Company shows the date of commencement of the Insurance as 01.06.2008, but cover note produced by the insured before the R.T.O. shows the date of commencement of the insurance as 27.05.2008. The signatures in both the documents appear to be the same. However, we do not intend to conduct a roving enquiry on the question of availability of the Insurance as on the date of the accident. It is the matter between the Insurance Company and the insured. The claimants cannot be made to depend on the outcome of the criminal proceedings launched by the Insurance Company against the insured.

14. We are, therefore, of the considered opinion that the Insurance Company would be liable to compensate the claimant and it will be at liberty to recover the award amount paid by it pursuant to the award of the Tribunal from the insured in these proceedings itself without recourse to separate proceedings. We do so considering the fact that there is a genuine dispute regarding the date of commencement of Insurance cover in the case on hand.

15. Mr.N.E.A.Dinesh, learned counsel appearing for the claimant would seek enhancement of the compensation awarded by the Tribunal relying upon the cross-objection filed by him. Mr.S.Arunkumar would however contend that this appeal is restricted only to the question of liability of the Insurance Company, therefore the claimant cannot maintain a cross appeal seeking enhancement. We perused the grounds of appeal in the CMA filed by the Insurance Company. As rightly pointed out by Mr.S.Arun Kumar, the Insurance Company has not raised any ground regarding the quantum of compensation payable. Therefore, we sustain the objection of Mr.S.Arun Kumar, that cross objection filed by the claimant seeking enhancement is not maintainable.

Even otherwise we do not see any ground to Interfere with the quantum of compensation awarded by the Tribunal.

16. In fine both the Appeal and Cross Objection are dismissed. The parties are directed to bear their own costs in the appeal and the cross-objection. Consequently, the connected miscellaneous petition is closed.

17. It is made clear that the Insurance Company entitled to recover the compensation paid by it from the insured in these proceedings itself without recourse to separate proceedings. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant will be entitled to withdraw the entire compensation.

Sd/-  
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

jv

To

1. The Motor Accidents Claims Tribunal  
Special Sub-Judge, Coimbatore.
2. The Section Officer, VR Section, High Court, Madras.

+1cc to M/s.V.Nicholas, Advocate SR.No.68063

+1cc to M/s.S.Arunkumar, Advocate SR.No.69009

CMA.No.3328 of 2013 & MP 1 of 2013  
Cross Objection No.73 of 2017

NRI (CO)

GMV (01/11/2018)

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