

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal Nos.634, 635, 636 and 637 of 2016

C.M.A.No.634 of 2016:

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai-13. Appellant/2nd respondent

..vs..

1.Lyla 1st respondent/petitioner

2.Mohamed Gani 2nd respondent/1st respondent
(R2 Exparte)

C.M.A.No.635 of 2016:

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai-13. Appellant/2nd respondent

..vs..

1B.Mamud 1st respondent/petitioner

2.Mohamed Gani 2nd respondent/1st respondent
(R2 seet exparte)

C.M.A.No.636 of 2016:

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai-13. Appellant/2nd respondent

..vs..

1.R.Abima 1st respondent/petitioner

2.Mohamed Gani
(R2 exparte)

... 2nd respondent/1st respondent

C.M.A.No.637 of 2016:

United India Insurance Co. Ltd.,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai-13.

... Appellant/2nd respondent

..vs..

1.K.Mabu

... 1st respondent/petitioner

2.Mohamed Gani
(R2 exparte)

... 2nd respondent/1st respondent

PRAYER IN C.M.A.No.634 of 2016:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 16.06.2015, made in MCOP.No.3659 of 2013 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

PRAYER IN C.M.A.No.635 of 2016:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 16.06.2015, made in MCOP.No.3662 of 2013 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

PRAYER IN C.M.A.No.636 of 2016:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 16.06.2015, made in MCOP.No.3663 of 2013 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

PRAYER C.M.A.No.637 of 2016:

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 16.06.2015, made in MCOP.No.3668 of 2013 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai.

For Appellant: M/s.R.Vijaya Kamala
(in All CMAs)

Respondent : Mr.K.Malaikannu
(in All CMAs) for R-1

COMMON JUDGMENT

Aggrieved over the findings of the Tribunal dated 16.06.2015, made in MCOP.Nos.3659, 3662, 3663 and 3668 of 2013 on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai, the second respondent Insurance company filed these present appeals to set aside the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of all the petitioners is that on 13.02.2013 at about 19.30 hours, while the petitioners were travelling as passengers in the Auto bearing Registration No.TN-04-R-1626 in T.H. Road, Thangal, from South to North, while going near Indian Bank, due to the high speed, in which the auto was driven, the driver lost control dashed against the centre median of the road and as the auto capsized, the petitioners suffered grievous injuries. The negligence of the first respondent auto driver alone caused the accident. The said auto was insured with the second respondent Insurance Company. The petitioners are all fish vendors earning a sum of Rs.10,000/- per month. Due to the injuries suffered, they are unable to carry on their normal avocation resulting in loss of income to them. Thus, the petitioners seeks a sum of Rs.1,00,000/- each as compensation from the respondents who are the owner and insurer of the offending vehicle.

4.On the other hand, opposing the claim petition, the second respondent Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioners. The claim of the petitioners about the age, avocation and income is denied. The petitioners have to prove the manner of accident and negligence of the auto driver along caused the accident. The petitioners have to prove the driver of the auto possessed valid driving licence at the time of accident. The seating capacity of the auto was only 3+1 persons, but 5 persons travelled in the auto which amounts to clear violation of insurance policy terms and conditions. The accident occurred only due to the negligence of the petitioners and as such the second respondent Insurance Company is not

liable to pay any compensation. The claim of the petitioners about the injuries suffered by them is not true and they have suffered only simple injuries. Thus, the second respondent Insurance Company sought for dismissal of all the claim petitions.

5. Before the Tribunal, MCOP.No.3659 of 2013 (CMA.No.634/2016), MCOP.No.3662 of 2013 (CMA.No.635/2016), MCOP.No.3663 of 2013 (CMA.No.636/2016) and MCOP.No.3668 of 2013 (CMA.No.637/2016), were taken up for joint trial. The petitioners examined P.W.1 to P.W.5, produced documents Ex.P1 to Ex.P25 to prove their claim. The second respondent examined R.W.1, produced documents Ex.R1 and Ex.R2 to contradict the claim of the petitioners.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent auto driver alone caused the accident, passed an award for a sum of Rs.1,38,000/- (in MCOP.No.3659/2013), Rs.1,50,000/- (in MCOP.No.3668/2013), Rs.1,47,000/- (in MCOP.No.3663/2013), Rs.153,000/- (in MCOP.No.3662/2013), respectively as compensation to the respective petitioners. The Tribunal also permitted the second respondent to recover the amount from the first respondent, owner of the auto in excess of the liability due under policy. Aggrieved over the said findings of the Tribunal, the second respondent Insurance Company has come forward the present appeals to set aside the award passed by the Tribunal.

7. Heard the learned counsel appearing for the Appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioners/claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the trial Court erroneously held that the petitioners suffered grievous injury and passed an Award in excess of the claim made by the petitioners themselves. The Tribunal erred in providing amounts to the petitioners towards future medical expenses, even though there is no evidence to show the petitioner required treatment in future. The petitioners having suffered only simple injuries, the Tribunal erred in granting them future prospects as well as huge amount as compensation for pain and sufferings, attender charges and extra-nourishment. The learned counsel appearing for the appellant/2nd respondent Insurance Company further contended that in the Discharge Summaries produced by the petitioners as Ex.P5, Ex.P9, Ex.P11 and Ex.P15 nothing is stated about the permanent disability or grievous injuries suffered by the petitioners. Therefore, no amount need to be

provided towards disability compensation. The Auto bearing Registration No.TN-04-R-1625 has seating capacity of 3+1 persons only, but at the time of accident 5+1 persons were travelling in the said auto, which clearly amounts to violation of policy condition. As such, no liability can be fastened on the appellant/second respondent Insurance Company. Thus, the appellant/second respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the petitioners/claimants/first respondent contends that the accident occurred due to the negligence of the first respondent auto driver and as such, the respondents who are the owner and insurer of the auto are liable to pay compensation. It is further contended that the petitioners have produced the disability certificate marked as Ex.P18, Ex.P20, Ex.P22 and Ex.P24 and examined medical expert as P.W.5 to prove the nature of injuries suffered and the disability caused due to the accident. The functional ability of the petitioners is affected and as such the Tribunal is justified in providing compensation for disability suffered by them and there is no need to interfere with the award passed by the Tribunal. Thus, the petitioners/claimants seeks dismissal of all the appeals.

10.The petitioners who deposed as P.W.1 to P.W.4 before the Tribunal clearly stated that as they were travelling in the first respondent Auto bearing Registration No.TN-04-R-1625, due to the rash and negligent driving of the auto by the driver, the Auto dashed on the centre median of the T.H. Road, Thangal, resulting in the accident. The Police also registered Ex.P1 First Information Report against the driver of the first respondent auto only. It is also clear from Ex.R1 Rough Sketch of the occurrence spot that the accident occurred in the centre of the road. The police, after completion of investigation, laid charge sheet against the auto driver only as evidenced by Ex.P4 copy of the charge sheet. Thus, it is clear from the oral evidence of P.Ws.1 to 4 corroborated by the contents of Ex.P1 First Information Report and Ex.P4 Charge Sheet that negligence of the first respondent auto driver alone resulted in the accident. The respondents has not let in any evidence to contradict the version of the petitioners about the manner in which the accident occurred. As such, considering the evidence available on record, the Tribunal has correctly concluded that the negligence of the first respondent Auto driver alone caused the accident. The said conclusion is just and proper and does not warrant any interference.

11.The petitioners were travelling in the auto and subsequent to the accident, they have been admitted in

Government Stanley Medical College Hospital, Chennai on 13.02.2013 and they were discharged on 18.02.2013. The petitioners claim that all of them were doing fish vending business earning Rs.10,000/- per month. However, there is no proof for the monthly income of the petitioners. As such, the Tribunal fixed the monthly income of the petitioners at Rs.9,000/- per month. The learned counsel appearing for the appellant-Insurance Company contends that the Tribunal erred in fixing the monthly income at Rs.9,000/-, in the absence of any proof for the earning of the petitioners. Considering the said factor, it will be appropriate to fix the monthly income of the petitioners at Rs.7,500/- per month.

12.The petitioners have stated that they have suffered multiple injuries all over the body. The petitioners also examined P.W.5 Doctor to prove that they have suffered partial permanent disability. The Doctor who examined the petitioners physically and also took X-rays marked as Ex.P19, Ex.P21, Ex.P23 and Ex.P25, assessed the disability suffered by the petitioners and issued disability certificate Ex.P18, Ex.P20, Ex.P22 and Ex.P24. According to P.W.5 Doctor, the petitioner in MCOP.No.3659/2013 (CMA.No.634 of 2016), Tmt.Lyla has suffered 18% partial permanent disability, the petitioner in MCOP.NO.3662 of 2013 (CMA.No.635 of 2016), Tmt.B.Mamud suffered 23 % disability, the petitioner in MCOP.No.3663 of 2013 (CMA No.636 of 2016), Tmt.R.Abima suffered 21% partial permanent disability and the petitioner in MCOP.No.3668 of 2013 (CMA.No.637 of 2016), Tmt.K.Mabu suffered 22% partial and permanent disability due to the injuries suffered in the accident.

13.Admittedly, P.W.5 Doctor has not given treatment to the petitioners. Further, P.W.5 has not attached any calculation sheet with the disability certificate issued by him. Disputing the assessment of P.W.5 Doctor, the learned counsel appearing for the appellant Insurance Company/2nd respondent contends that as per the discharge summary Ex.P4, Ex.P9, Ex.P11 and Ex.P15 issued by the Government Stanley Medical College Hospital, Chennai, the petitioners have not suffered any grievous injuries or partial permanent disability and therefore, the assessment of P.W.5 Doctor should not be accepted. The learned counsel appearing for the appellant-Insurance Company also pointed out that the petitioner suffered only abrasions as evidenced by discharge summaries and there is no question of any grievous injuries or disability suffered by them.

14.On the other hand, the Doctor, who deposed as P.W.5 and issued disability certificates stated that the petitioner in MCOP.No.3659 of 2013 Mrs.Lyla suffered head injury, Developed injuries to the occipital region, fore head and shoulder. According to P.W.5, the said petitioner is suffered severe

Headache and giddiness. Likewise, P.W.5 stated that the petitioner in MCOP.No.3662 of 2013 Tmt.Mamud suffered big lacerated injury over head at the scalp, injury in spinal cord and due to that suffers from fits frequently. P.W.5 also opined that due to severe headache caused by the injury, the quality of her life is affected. P.W.5 Doctor further stated that the petitioner (Mamud) is in need of continuous medical management for fits and the partial permanent disability suffered by her is 23%. P.W.5 Doctor also stated that the petitioner in MCOP.No.3663 of 2013, Tmt.R.Abima has suffered head injury, brain contusion and right shoulder tissue tearing injury as well as multiple abrasions. According to him, no improvement of health condition is achieved. P.W.5 also stated that Abima cannot stand or sit for long time and cannot walk fast and cannot pull or lift weight and the partial permanent disability suffered by her is assessed at 21%. Similarly, P.W.5 Doctor examined the petitioner in MCOP.No.3668 of 2013 K.Mabu and she suffered multiple abrasions, right shoulder injury and sustained annular bulge at low back level, L4 to L5. According to P.W.5, the petitioner (Mabu) cannot stand and sit for long time and she will find difficulty in lifting weight and she will not be able to walk fast and day today activities cannot be done effectively using his shoulder and wrist. Thus, P.W.5 has stated about the physical disability suffered by the petitioners.

15.Considering the contention of the learned counsel appearing for the appellant-Insurance Company and the discharge summary issued by the Government Stanley Medical Collage Hospital as well as the oral evidence of P.W.5 Doctor and the contents of the disability certificate issued by him, which is not supported by any working sheet, this Court is of the considered view that it will be appropriate to fix the disability suffered by the petitioners at 10% each. As there is no evidence to show that the functional ability of the petitioners is affected, there is no need to adopt multiplier method and it will be appropriate to compensation them by adopting percentage method. Thus, the disability compensation will be calculated at the rate of Rs.3000/- per percentage. (Rs.3,000/- x 10% = Rs.30,000/-). Thus, the petitioners are each entitled to Rs.30,000/- as disability compensation.

16.Due to the injuries suffered by the petitioners, they would not have attended to them normal work at least for one month during treatment. Thus, they are entitled to compensation at the rate of Rs.7,500/- each. Thus, a sum of Rs.7,500/- each is provided towards loss of income during treatment period instead of Rs.9,000/- provided by the Tribunal.

17.The Tribunal has awarded a sum of Rs.5000/- towards medical expenses to each of the petitioners. Admittedly, the

petitioners took treatment in Government Stanley Medical College Hospital, Chennai only and there is no medical bill or any other documentary proof to show that the petitioners incurred any medical expenses. As such, there is no need to provide for medical expenses in the absence of any medical bills. Thus, the amount provided towards medical expenses by the Tribunal is hereby set aside. Likewise there is no evidence to conclude that the petitioners are in need of future medical treatment. Therefore, the conclusion of the Tribunal providing Rs.40,000/- towards future medical expenses is also hereby set aside.

18. Similarly, the Tribunal has awarded a sum of Rs.10,000/- towards loss of amenities suffered by the petitioner. As stated above, there is nothing on record to show that the petitioners suffered any functional disability. Therefore, provisions of any amount towards loss of amenities will not arise. Thus, the amount provided by the Tribunal under the head of loss of amenities is unsustainable and the same is hereby set aside. Admittedly, the petitioners have suffered injury and consequential disability. Therefore, for pain and sufferings undergone by them, it will be appropriate to compensate them. As such, the amount of Rs.10,000/- provided by the Tribunal to each of the petitioner is hereby confirmed. The amount provided by the Tribunal under the head Transportation, Extra-nourishment, attender charges and damage to cloths at the rate of Rs.2,000/-, Rs.3,000/-, Rs.3,000/- and Rs.2,000/- to the each of the petitioner is confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Permanent Disability	Rs. 30,000.00
Attender Charges	Rs. 3,000.00
Extra-nourishment	Rs. 3,000.00
Transportation	Rs. 2,000.00
Damage to Cloths	Rs. 2,000.00
Loss of income during treatment period	Rs. 7,500.00
Pain and sufferings	Rs. 10,000.00
Total	Rs. 57,500.00

Accordingly, the sum of Rs.1,38,000/-, Rs.1,50,000, Rs.1,47,000/- and Rs.1,53,000/- Awarded by the Tribunal to the petitioners in MCOP.No.3659 of 2013, MCOP.No.3662 of 2013, MCOP.No.3663 of 2013 and MCOP.No.3668 of 2013 respectively is modified and the same is reduced to Rs.57,500/- to each of the petitioners in the above said petitions.

19. The petitioners claim that the respondents who are the owner and insurer of the vehicle are liable to pay compensation. The owner/first respondent remained *exparte*. However, the learned counsel appearing for the appellant-Insurance Company contends that the Auto in which the petitioners travelled was permitted to carry only 3+1 persons as per the terms and conditions of the Insurance Policy, but, it carried 5 +1 persons at the time of accident, which will clearly amount to violation of the terms and conditions of the insurance policy as well as the permit. Since the first respondent owner permitted the driver of the auto to commit violation as stated above, the appellant-Insurance Company pleads that they are to be exonerated and they are not liable to pay any compensation. It is true that the vehicle involved in the accident carried passengers in more numbers, than permitted under the terms and conditions of the permit as well as insurance policy and therefore the same will clearly amount to violation of policy conditions. However, as the policy coverage was in force, the insurer cannot escape from its liability to pay compensation to the petitioners/claimants who are the third parties. In support of the same, the ruling of the Apex Court reported in 2011(1) TN MAG 441(SC) in UNITED INDIA INSURANCE CO. LTD., Vs. K.M. POONAM AND OTHERS, is relied upon. In the said ruling, it is held as follows:-

"Having arrived at the conclusion that the liability of the Insurance Company to pay compensation was limited to six persons travelling inside the vehicle only and that the liability to pay the others was that of the owner, we in this case, are faced with the same problem as had surfaced in Anjana Shyam's case(supra). The number of persons to be compensated being in excess of the number of persons who could validity be carried in the vehicle, the question which arises is one of apportionment of the amounts to be paid. Since there can be no pick and choose method to identify the five passengers, excluding the driver, in respect of whom compensation would be payable by the Insurance Company, to meet the ends of justice we may apply the procedure adopted in Baljit Kaur's case(supra) and direct that the Insurance Company should deposit the total amount of compensation awarded to all the claimants and the amounts so deposited be disbursed to the claimants in respect of their claims, with liberty to the Insurance Company to recover the amounts paid by it over and above the compensation amount payable in respect of the persons covered by

the Insurance Company from the owner of the vehicles, as was directed in Baljit Kaur's case.

Following the above said rulings, the appellant Insurance Company is liable to pay the entire award amount, but entitled to recover the amount paid over and above, the compensation covered by the Insurance Policy from the owner of the vehicle. The point is answered accordingly.

20. C.M.A.No.634 of 2016:

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.1,38,000/- awarded by the Tribunal dated 16.06.2015, on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai is hereby reduced to Rs.57,500/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.57,500/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The appellant-Insurance Company is entitled to recover the award amount from the first respondent/owner of the auto after the entire award amount is paid. Excess amount, if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

21. C.M.A.No.635 of 2016:

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.1,53,000/- awarded by the Tribunal dated 16.06.2015, on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai is hereby reduced to Rs.57,500/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.57,500/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The appellant-Insurance Company is entitled to recover the award amount from the first respondent/owner of the auto after the entire award amount is paid. Excess amount, if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

22. C.M.A.No.636 of 2016:

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.1,47,000/- awarded by the Tribunal dated 16.06.2015, on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai is hereby reduced to Rs.57,500/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.57,500/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The appellant-Insurance Company is entitled to recover the award amount from the first respondent/owner of the auto after the entire award amount is paid. Excess amount, if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

23. C.M.A.No.637 of 2016:

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The amount of Rs.1,50,000/- awarded by the Tribunal dated 16.06.2015, on the file of the Motor Accident Claims Tribunal/VI Judge, Small Causes Court, Chennai is hereby reduced to Rs.57,500/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.57,500/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The appellant-Insurance Company is entitled to recover the award amount from the first respondent/owner of the auto after the entire award amount is paid. Excess amount, if any paid by the appellant Insurance company shall be refunded. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The VI Judge,
Small Causes Court,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras-104.

+ 1 cc to Mr. K. Malaikannu, Advocate Sr.47890

+ 4 ccs to Ms. R. Vijay Kamala, Advocate Sr.47900 to 47903

C.M.A.Nos.634 to 637 of 2016

NM(CO)
EU(28/09/2018)



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