

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2640 of 2010 and 2193 of 2011

and

M.P.No. 1 of 2010 and M.P.No.1 of 2011

United India Insurance Company Ltd.,
Co-operative Building
No.38, Anna Salai,
Chennai-2

: Appellant in both C.M.As/Respondent 2

Versus

1. Ms. Pavitra : 1st Respondent in C.M.A.No.2640 of 2010/
Petitioner

1. Mr. Rajendran : 1st Respondent in C.M.A.No.2193 of 2009/
Petitioner

2. Mr.Thangaraj : 2nd Respondent in both C.M.As/1st Respondent

Common Prayer : These Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and Judgment dated 25.09.2009 and 3.7.2009, passed in M.C.O.P.No.653 of 2006, and M.C.O.P.No.651 of 2006 on the file of Motor Accidents Claims Tribunal (FTC IV-Additional District Judge) Ponneri and may be pleased to restrict the liability of this appellant to the permitted carrying capacity as per the Act after considering the revision in various heads of compensation on the quantum by modifying the award on the part of the appellant.

In both appeals

For Appellant : Mr.G. Udayasankar
For R-1 : Mr.A. Subadra for M.Malar
For R-2 : No Appearance

COMMON JUDGMENT

These two Civil Miscellaneous appeals have been preferred by the appellant/Insurance Company against the decree and Judgment dated 25.09.2009 and 3.7.2009, passed in M.C.O.P.No.653 of 2006, and M.C.O.P.No.651 of 2006 respectively on the file of Motor Accidents Claims Tribunal (FTC IV-Additional District Judge) Ponneri.

2.The facts of the case are as follows:

On 13.08.2006 at about 20.45 hours, when the claim petitioners were traveling in an Auto bearing Registration No.TN-05-P-3583 as passengers and when the auto was crossing S.M.Nagar near Vysarpadi, the auto was driven by its driver at a very high speed in a rash and negligent manner and while he was over taking, another auto bearing Registration No.TN-05-R-4006, which came in the opposite direction was capsized. As a result of which, the claimants fell down and sustained injuries.

3. Hence, both of them have filed claim petitions in M.C.O.P.No.653 of 2006 and M.C.O.P.No.651 of 2006 respectively on the file of the Motor Accident Claims Tribunal, Additional District Judge-FTC-IV, Ponneri, seeking compensation for a sum of Rs.1,00,000/- each. The Tribunal, on consideration of both oral and documentary evidence, has awarded a sum of Rs.43,000/- and Rs.46,000/- respectively payable with interest at the rate of 7.5% per annum.

4. Aggrieved over the same, the appellant/Insurance Company has come forward with the present appeals.

5. The learned counsel appearing for the appellant in both the appeals/Insurance Company would contend, that the Tribunal has failed to verify the vital fact that whether the driver of the alleged vehicle involved in the accident, has valid driving license on the date of accident and further contended that the award passed by the Tribunal is very exorbitant, considering the nature of injuries sustained by the claimants. He has also contended that the Tribunal has failed to consider the Apex Court's Judgment in respect of such violation of permitted condition and over loading of the passengers in the auto, against the permitted carrying capacity of the vehicle which is against the provisions of the Motor Vehicles' Act 1988.

6. Per Contra, the learned counsel for the first respondent in both the appeals/claimants would contend that the driver of the auto, in which they travelled, followed the traffic rules and he has also possessed valid driving license at the time of the accident and hence, prays to confirm the award passed by the Tribunal.

7. Heard both sides.

8.From the perusal of the materials available on record, it is seen that before the Tribunal, on the side of the claimant in M.C.O.P.No.653 of 2006, two witnesses were examined as P.Ws.1 and 2 and eight documents were marked as Exs.P.1 to P.8 and on the side of the claimant in M.C.O.P.No.651 of 2006, two

witnesses were examined as P.Ws.1 and 2 and nine documents were marked as Exs.P.1 to P.9. On the side of the respondents, neither oral nor documentary evidence was adduced.

9. The Tribunal, on the basis of oral and documentary evidence adduced on the side of the claimant, awarded a sum of Rs.43,000/- as compensation in M.C.O.P.No. 653 of 2006 under the following heads:-

S.No	Particulars	Amount
1	Loss of Income	-
2	Transport to Hospital	Rs.1,000/-
3	Extra Nourishment	Rs.2,000/-
4	Medical Expenses	Rs.5,000/-
5	Pain and suffering	Rs.5,000/-
6	Future Amenities for its disability	Rs.30,000/-
	Total	Rs.43,000/-

Further, in M.C.O.P No.651 of 2006, the Tribunal has awarded a sum of Rs.46,000/- under the following heads:

S.No.	Particulars	Amount
1	Transport Expenses	Rs.2,000/-
2	Extra Nourishment	Rs.4,000/-
3	Pain and suffering	Rs.10,000/-
4	Future Amenities for its disability	Rs.30,000/-
	Total	Rs.46,000/-

10. On a perusal of the records, it is seen that based upon the oral and documentary evidence, the Tribunal has come to a conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent before the Tribunal and it also appears that the Insurance compaly has filed a petition under Section 170 of the Motor Vehicles Act, 1988 and the same was allowed. After going through the evidence of P.W.2/Doctor and the documents Discharge summary-Ex.P.3 and Motor vehicle inspector's inspection report, the compensation awarded under various heads appears to be just and reasonable and hence, the finding of the Tribunal with regard to the quantum of compensation is hereby confirmed. Accordingly, both the Civil Miscellaneous Appeals are liable to be dismissed.

11. In the result,

(a) The above two Civil Miscellaneous Appeals are dismissed and the Judgments and Decree passed by the Motor Accidents Claims Tribunal, in M.C.O.P.Nos.653 and 651 of 2006 dated 25.09.2009 and 03.07.2009 respectively, are hereby confirmed.

(b) the appellant/Insurance company is directed to deposit the amount awarded by the Tribunal, less the amount already deposited, if any, with interest at the rate of 7.5% per annum, within a period of 8 weeks from the date of receipt of copy of this Judgment.

(c) On such deposit, the first respondent in both the appeals / claimants are permitted to withdraw the award amount by way of filing proper application before the Tribunal.

(d) There will be no order as to costs.

(e) Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn

To

1. The Motor Accidents Claims Tribunal,
Additional District cum Fast Track Court-IV,
Ponneri.

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

+1cc to Ms.M.Malar, Advocate, S.R.No.26918.

+1cc to Mr.G.Udayasankar, Advocate, S.R.No.27333.

CMA No.2640 of 2010
and

C.M.A.No.2193 of 2011

BR(CO)

CSR 19.04.2021