IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1755, 1756 and 1757 of 2015

Lakshmi .. Appellant/Claimant in C.M.A.No.1755 of 2015
M.Chandrasekar .. Appellant/Claimant in C.M.A.No.1756 of 2015
C.Murugan .. Appellant/Claimant in C.M.A.No.1757 of 2015

Vs.

1.M.Shanmuganathan

2.The Shri Ram General Insurance Company Ltd.,
No.E-8, Epip, RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan State-302 022.

3.V.Loganathan .. Respondents in all C.M.As.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common Judgment and Decree dated 23.12.2014 made in M.C.O.P.Nos.139, 140 and 149 of 2013 on the file of Motor Accidents Claims Tribunal, Sub Court, Gobichettipalayam.

In all the C.M.A's

For Appellants : Mr.MA.P.Thangavel

For R2 : Mr.S.Dhakshnamoorthy
No appearance for R1 & R3

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

These Civil Miscellaneous Appeals have been filed against the common award dated 23.12.2014 made in M.C.O.P.Nos.139, 140 and 149 of 2013 on the file of Motor Accidents Claims Tribunal, Sub Court, Gobichettipalayam.

2.All the three Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment.

3.The appeals are filed by the claimants challenging the award of the Tribunal exonerating the second respondent-Insurance Company and for enhancement of compensation.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Auto belonging to the respondents 1 and 3 and awarded a sum of Rs.1,36,000/-, Rs.1,03,000/- and Rs.21,000/- as compensation to the claimants.

5.The learned counsel appearing for the appellants contended that the Tribunal erred in exonerating the second respondent-Insurance Company and fixing the liability only on the third respondent/owner of the vehicle having taken note of the fact that the Insurance policy was not in force on the date of accident and the Tribunal erred in holding that there is no privity of contract between the appellant and third respondent. The Tribunal erred in holding that the second respondent/Insurance Company is not liable to pay compensation on the ground that the driver of the vehicle did not possess badge or endorsement. The amounts awarded by the Tribunal under different heads are meager. The appellant in C.M.A.No.1755 of 2015 sustained 45% of disability and the appellant in C.M.A.No.1756 of 2015 sustained 30% of disability. The Tribunal without any reason on erroneous ground reduced the percentage of disability. The Tribunal ought to have applied multiplier method instead of granting compensation on percentage basis and prayed for allowing all the three appeals.

6.Per Contra, Mr.S.Dhakshnamoorthy, the learned counsel appearing for the second respondent-Insurance Company contended that originally the first respondent was the owner of the vehicle and he took Insurance Policy from the second respondent. The first respondent sold the vehicle to third respondent. But, he did not inform the second respondent-Insurance Company about the transfer of vehicle. There is no privity of contract between the respondents 2 and 3 as the policy was not transferred in the name of the third respondent. The driver of the auto did not obtain endorsement or badge to drive commercial vehicle. The third respondent permitted the driver to drive the auto knowing fully well that the driver did not possess valid driving license to drive the commercial vehicle. The Tribunal has given valid reasons for exonerating the 2nd respondent-Insurance Company and the amounts awarded by the Tribunal are not meager and prayed for dismissal of all the appeals.

7.Heard the learned counsel appearing for the appellants as well as the second respondent and perused all the materials available on record.

8.From the materials available on record, it is seen that the Tribunal has exonerated the second respondent-Insurance Company on the ground that there was no privity of contract between the second respondent and third respondent and that the driver of the auto did not possess badge or endorsement for driving commercial vehicle. Both the grounds for exonerating the Insurance Company are erroneous. As per section 157 of Motor Vehicles Act, 1988, the policy of insurance is with regard to vehicle, when the ownership of the vehicle is transferred, the transferee must inform the Insurance Company about the same and within 14 days apply to insurer for making necessary changes in the certificate of insurance about transfer. The explanation was inserted to Sub-Section of (I) of section 157, which came into force with effect from 14.11.1994. The explanation makes it clear that the deemed transfer of ownership shall include transfer of rights and liability of Insurance policy issued by the insurer. In view of the above provision, the transfer of ownership by first respondent to third respondent, automatically transfers the policy of Insurance to third respondent. The second respondent-Insurance Company is not right in contending that there is no privity of contract between second respondent-Insurance Company and the third respondent, subsequent purchaser. The Tribunal failed to consider the scope of Section 157 of Motor Vehicle Act, 1988, and erred in holding that there is no privity of contract between the respondents 2 and 3.

9.Similarly, the issue of obtaining endorsement or badge to drive a commercial vehicle by a person holding driving license to drive light motor vehicle came for consideration before the Hon'ble Apex Court in the judgment reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,] wherein the Hon'ble Apex Court has held that when a person holds a driving license to drive vehicles of particular class he is entitled to drive all the categories of vehicle in that class including commercial vehicle and there is no necessary to obtain badge or endorsement. For the above reasons, the award of the Tribunal exonerating the second respondent-Insurance Company is set aside and this Court holds that the Insurance Company is also liable to pay compensation to the appellants.

10.From the materials on record, it is seen that all the three appellants traveled in a motorcycle in violation of statutory provision. In a two wheeler only two persons can travel. If more than two persons travel in violation of rules, this Court had held that they had contributed negligence for the accident. The Division Bench of this Court held that when three persons travel in a two wheeler, the rider of the two wheeler is cramped so much and he has no full control over the brake and in certain cases he is almost sitting on the petrol tank. Whether a plea of contributory negligence is taken and proved or not, when more than two persons traveled in a two wheeler, they automatically contribute negligence and 25% of contributory negligence is fixed. Applying the said principle, this Court is of the considered view that all the three appellants contributed 25% of the contributory negligence for the accident. In view of the same, the second respondent-Insurance Company is liable to pay 75% of the award amount as compensation to the appellants.

11.As far as quantum of compensation awarded to the appellants in C.M.A.No.1755 and 1756 of 2015 are concerned, P.W.4-Doctor has deposed with regard to nature of injuries and percentage of disability sustained by them. For appellant in C.M.A.No.1755 of 2015, the Doctor fixed the percentage of disability at 45% and for the appellant in C.M.A.No.1756 of 2015, fixed the percentage of disability at 30%. The Tribunal reduced the same by 5%, on the ground that P.W.4 is not the Doctor, who treated them. The said reasons given by the Tribunal is not correct. The appellants are entitled to compensation for disability as certified by P.W.4/Doctor. The Tribunal has fixed a sum of Rs.2,000/- per percentage of disability. The accident occurred on 28.05.2013. The appellants are entitled to compensation at the rate of Rs.3,000/- per percentage. Thus, the amount awarded by the Tribunal towards permanent disability is modified to Rs.1,35,000/- (Rs.3,000/- X 45% of disability) and Rs.90,000/- (Rs.3,000/- X 30% of disability) for appellants in C.M.A.Nos.1755 & 1756 of 2015 respectively.

12.The appellants have not substantiated their contention with regard to their income by producing any documentary evidence. However, a sum of Rs.3,000/- fixed by the Tribunal as monthly income is meager and the same is enhanced to Rs.6,000/- and the appellants in C.M.A.Nos.1755 and 1756 of 2015 are entitled to Rs.36,000/- (Rs.6,000/- X 6) towards loss of income for six months at the rate of Rs.6,000/- per month. From the materials on record, it is seen that the appellants have taken treatment only in Government Hospital. No evidence has been produced to substantiate that they require medical treatment in future. Hence, the Tribunal has rightly rejected their claim. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the amounts awarded by the Tribunal in C.M.A.Nos.1755 and 1756 of 2015 are modified as follows:

C.M.A.No.1755 of 2015 (M.C.O.P.No.139 of 2013):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	80,000/-	1,35,000/-	enhanced
2.	Loss of earning	18,000/-	36,000/-	enhanced
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Extra nourishment	9,000/-	9,000/-	confirmed
5.	Attender charges	9,000/-	9,000/-	confirmed
6.	Pain and suffering	10,000/-	10,000/-	confirmed
7.	Mental agony and shock	5,000/-	5,000/-	confirmed
	Total	1,36,000/-	2,09,000/-	enhanced by Rs.73,000/-

C.M.A.No.1756 of 2015 (M.C.O.P.No.140 of 2013):

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	50,000/-	90,000/-	enhanced
2.	Loss of earnings	27,000/-	36,000/-	enhanced
3.	Transportation	5,000/-	5,000/-	confirmed
4.	Extra nourishment	5,000/-	5,000/-	confirmed
5.	Attender charges	5,000/-	5,000/-	confirmed
6.	Pain and suffering	6,000/-	6,000/-	confirmed
7.	Mental agony and shock	5,000/-	5,000/-	confirmed
	Total	1,03,000/-	1,52,000/-	enhanced by Rs.49,000/-

C.M.A.No.1757 of 2015 (M.C.O.P.No.149 of 2013):

As far as appellant in C.M.A.No.1757 of 2015 is concerned, he suffered only simple injuries. He took treatment in the hospital as in-patient from 29.05.2013 to 03.06.2013. The Tribunal has not awarded any amount towards attendant charges. Therefore, the appellant is entitled to a sum of Rs.5,000/- towards attendant charges. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	5,000/-	5,000/-	confirmed
2.	Extra Nourishment	5,000/-	5,000/-	confirmed
3.	Pain and suffering	6,000/-	6,000/-	confirmed
4.	Mental agony and shock	5,000/-	5,000/-	confirmed
5.	Attender Charges	-	5,000/-	granted
	Total	Rs.21,000/-	Rs.26,000/-	enhanced by Rs.5,000/-

13.In the result, all these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.1,36,000/- (M.C.O.P.No.139 of 2013), Rs.1,03,000/- (M.C.O.P.No.140 of 2013) and Rs.21,000/- (M.C.O.P.No.149 of 2013) are hereby enhanced to Rs.2,09,000/- (C.M.A.No.1755 of 2015), Rs.1,52,000/- (in C.M.A.No.1756 of 2015) and Rs.26,000/- (C.M.A.No.1757 of 2015). The second respondent-Insurance Company is directed to deposit 75% of the enhanced award amount i.e., Rs.1,56,750/-, Rs.1,14,000/- and Rs.19,500/- in C.M.A.Nos.1755, 1756 & 1757 of 2015 respectively along with interest and cost, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw their respective modified award amount along with interest and cost, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gbi/krk

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Gobichettipalayam.

Copy TO

The Section Officer,
VR Section,
High Court,
Madras.

+3cc to Mr.P.Thangavel, Advocate, S.R.No. 6179, 6180, 6178
+3cc to Mr.S.Dhakshnamoorthy, Advocate, S.R.No. 5865, 5866, 5867

C.M.A.Nos.1755, 1756 and 1757 of 2015

VBA(CO)
GN(27/05/2019)