IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2019
PRONOUNCED ON : 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos. 1767, 2153 and 2154 of 2012

CMA.No.1767 of 2012:

S.Radhakrishnan ...Appellant/Petitioner

.. Vs ..

1. S.Mani
2. The Bajaj Allianz General Insurance Company Limited,
   Prince Plaza, 25/26, College Road,
   Nungambakkam, Chennai-6. ...Respondents/Respondents

(The 1st respondent ex-parte in lower court,
hence notice may be dispense with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to allow this appeal and to allow the claim in MCOP.No.405 of 2008, on the file of the Motor Accident Claims Tribunal, (Chief Small Causes Court) Chennai.

For Appellant	:	Mr.V.Mohan Choudary
For R1	:	Ex-parte
For R2	:	Mr.N.Vijayaraghavan

C.M.A.No.2153 of 2012:

M/s.Bajaj Allianz General Insurance Company Limited,
No.22/24, Prince Towers, Ground Floor,
College Road, Nungambakkam,
Chennai-600 006. ...Appellant/2nd Respondent

..Vs..

1.Krishnan
2.K.Adhilakshmi
3.Veerammal
4.Valliammal
5.K.Mahalingam
6.Uma ...Respondents 1-6/Petitioners 1-6
7.S.Mani ...7th Respondent/1st Respondents
(7th Respondent ex parte
in Lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.2456 of 2007, dated 23.02.2012 on the file of the Motor Accident Claims Tribunal, learned Chief Judge of Small Causes Court, Chennai.

For Appellant	:	Mr.N.Vijayaraghavan
For R1to R6	:	Mr.K.Varadhakamaraj
For R7	:	Ex-parte

C.M.A.No.2154 of 2012:

M/s.Bajaj Allianz General Insurance Co. Ltd.,
No.22/24, Prince Towers, Ground Floor,
College Road, Nungambakkam,

Chennai-600 006. ...Appellant/2nd Respondent

..Vs..

1.S.RadhaKrishnan ...1st Respondent/Petitioner

2.S.Mani ...2nd Respondent/1st Respondent

(2nd Respondent ex parte
in Lower Court)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in MCOP.No.405 of 2008, dated 23.02.2012 on the file of the Motor Accident Claims Tribunal, learned Chief Judge of Small Causes Court, Chennai.

For Appellant	:	Mr.N.Vijayaraghavan
For R1	:	Mr.K.Varadhakamaraj
For R2	:	Ex-parte

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JUDGMENT

All the three Civil Miscellaneous Appeals are arising out from the very same accident that took place on 09.06.2007. In the accident that had taken place on 09.06.2007, two persons, who were standing on the road, were hit by a M 80 two wheeler bearing Registration No. TN-02-B-3467. In the impact, one person died on the spot while the other person sustained multiple grievous injuries which led to amputation of his leg.

2 For the death of Chennammal, her legal heirs have filed MCOP No.2456 of 2007 claiming compensation of Rs.5 lakhs. For the injuries sustained in the accident, the claimant viz., S.Radhakrishnan has filed MCOP No.405 of 2008, claiming a compensation of Rs.15,00,000/. The Tribunal by a common order dated 23.02.2012 awarded a sum of Rs.4,88,000/- in MCOP No. 2456 of 2007 and Rs.9,76,000/- in MCOP No. 405 of 2008 and the compensation amount were directed to be paid by the Insurance Company.

3 Aggrieved by the same, Insurance Company has filed CMA Nos. 2153, 2154 of 2012, questioning their liability to pay compensation to the claimants inasmuch as the Insurance policy was not in force on the date of the accident. In effect, it is the specific contention of the Insurance Company that the accident had taken place on 09.06.2007, however, even on 18.04.2007, for non-payment of premium amount, the Policy was cancelled and it was also communicated to the owner on 24.04.2007. It is also contended that the Tribunal ought not to have relied on the decision of the Honourable Supreme Court in Swarn Singh case as it relates to a case where the Insurance policy was in force and valid, but the

driver of the offending vehicle did not possess a valid driving licence. The Insurance Company also relied upon the Judgment in the case of ***United India Insurance Company limited Vs. Laxmamma and others*** reported in ***(2012) 5 SCC 234*** and the Judgment in **Usha Aggarwal Vs. Parmod Kumar Gupta & others reported in 2014 (1) TN MAC 45 (Del.)**

4 However, CMA No. 1767 of 2012 has been filed by the claimant/ S.Radhakrishnan seeking enhancement of compensation amount by contending that at the time of accident, he was aged 46 years and was earning Rs.10,000/- on self employment. However, due to the accident, his left below knee was amputated and that he had totally lost his earning capacity. Even though the Tribunal awarded Rs.9,76,000/- as compensation, the appellant/claimant would contend that the Tribunal did not award any amount towards future medical expenses besides that the amount awarded under various head such as Transportation, pain and suffering are meager. In effect, it is contended that the Tribunal ought to have treated the injuries suffered by the claimant as functional disability and awarded more amount as compensation towards future prospects.

5 The core issue in all the appeals is that whether the Insurance Company is liable to pay the compensation or not. The Insurance company has filed counter statement before the Tribunal alleging that the owner of the vehicle viz., S.Mani approached the office of the Insurance Company at Bhagwathi Palace, II floor, J Blok, 13, III Avenue, Annanagar, Chennai 600102 on 13.04.2007 and tendered a cheque bearing No. 364900 drawn on Indian Bank, Kolathur Branch for Rs.14,234/-, being consideration premium for getting insurance coverage for his vehicle TN-05-U-3081 and believing the transaction to be true and in the normal course, the said office issued the policy OG 08 1506 00000208 for the vehicle TB-05-U-3081.

6 The Insurance Company at Anna Nagar sent the cheque for collection and the said Branch office of Indian Bank did not honour the cheque No364900 as there were no sufficient funds available to the credit of the said S.Mani and returned the cheque.

7 The Insurance Company at Anna Nagar immediately sent a letter to the owner of the vehicle viz.,S.Mani on 18.04.2007 informing insurance coverage is VOID AB INITIO in view of the

cheque dishonoured and the same sent by registered post with Acknowledgment Due and the said letter had also been acknowledged.

8 Similarly the Insurance Company at Anna Nagar also sent the letter on 18.04.2007 to the RTO, Chennai 99 informing them that the policy covering TN 05 U 3081 had been canceled from inception since the premium had not been received and the said letter had also been acknowledged.

9 Before the Tribunal, on the side of the petitioners, four witnesses were examined as PW1 to PW4 and Ex.P1 to P22 were marked. On the side of the respondents, One B.Shiva Kollappan, one of the staff from the Insurance company was examined as RW1 and Ex.R1/Dishonoured cheque with memo, Ex.R2/Copy of Insurance Policy cancellation order, Ex.R3/Letter to RTO with acknowledgment card and Ex.R4/Letter to first respondent/owner of the vehicle with acknowledgment card were marked.

10 Thus, this Court finds that though cheque was issued by the owner of the vehicle towards premium amount, dated

13.04.2007 towards Insurance Coverage for the offending vehicle and consequently, the Policy was issued when the cheque sent for collection at the Indian Bank Branch office, the same was returned for insufficient funds and thereafter, the appellant/Insurance Company sent a letter to the first respondent herein/owner of the vehicle for terminating the policy of the Insurance and the same was received by the owner of the vehicle under Ex.R4. It has to be stated that after notice to the parties, recording dishonour of the Cheque, the Insurance Company has terminated the policy by issuing cancellation order under Ex.R2. The said factum of cancellation of Insurance Policy letter has been sent to Regional Transport Officer office under Ex.R3 and to the owner of the vehicle under Ex.R4, as stated supra and thus, this Court finds that the statutory requirements on the dishonour of the cheque issued for premium of policy, has been duly complied with by the Insurance Company and thus, the decision relied on by the Insurance Company reported in ***2008 (6) MLJ 142 – [National Insurance Company Limited Vs. Yellamma and Another]*** and ***2004 (2) TN MAC 534 - [National Insurance Company Limited, represented by its Branch Manager, Pudukkottai Vs. Selvamani and others]*** will squarely applicable to the facts and circumstances of the case.

11 At the risk of reputation, however, for the sake of the clarity it has to be stated that cheque issued by the owner of the lorry on 13.04.2007, was returned for insufficient funds on 17.04.2007 and in view of the dishonour of the cheque, the policy issued in favour of the lorry has been duly canceled by the Insurance Company and necessary communication to that effect has been issued to the owner of the lorry as well as to RTO under Ex.R3 and R4 and the same is served upon the lorry owner on 18.04.2007 while, the accident has taken place on 09.06.2007 and thus, applying the ratio of the Hon'ble Supreme Court reported in ***2008 (6) MLJ 142,*** cited supra, this Court holds that appellant has proved the cancellation of a policy by communication of letter dated 18.04.2007 itself to the owner of the vehicle and since the policy of the Insurance was canceled on 18.04.2007 itself, there is no premium paid thereafter and taking note of the date of the accident being 09.06.2007 this Court has no hesitation to hold that on the date of the accident viz., 09.06.2007, there is no valid policy coverage for the offending vehicle belonging to the first respondent. Accordingly, the Insurance Company cannot be fastened with any liability and therefore, has to be exonerated from any liability.

12 In this view of the matter, both the CMA.Nos.2153 and 2154 of 2012 filed by the Insurance Company stands allowed to the limited extent that the Insurance Company is exonerated from the liability and the first respondent/owner of the vehicle has to pay the quantum of compensation.

13 CMA.No.1767 of 2012 (MCOP.No.405 of 2008), is filed by the claimant/appellant, who has suffered injuries in the accident seeking enhancement of compensation amount of Rs.9, 76,000/-. It has to be stated that the claimant/appellant in this appeal is a rider of the M 80 two wheeler. While he was going in the front, the driver of the first respondent Tipper Lorry had drove the Tippor Lorry in a rash and negligent manner and dashed from the behind of the said M 80 two wheeler and thereafter dashed against a parked Auto Rickshaw and thereafter dashed against the lady standing in the bus stop. The lady, who suffered injury has died and her legal representatives have filed MCOP.No. 2456 of 2007; while MCOP.No.405 of 2008 is filed by the rider of the two wheeler, who is the present appellant herein.

14 Based upon the documentary evidence produced by PW3/doctor and Disability Certificate issued under Ex.P15, Ex.P7/Discharge Summary, Ex.P8/Copy of the Discharge Summary, Ex.P9/Discharge Bill, the Tribunal has fixed the monthly income at Rs.6,000/- and considering the age, multiplier 13 has been adopted. Since the disability arise out of amputation of entire leg, the Tribunal has rightly held that the compensation has to be worked out on multiplier method and accordingly, awarded compensation at

Rs.6,000 x 12 x 13= Rs.9,36,000/-

Further the Tribunal has awarded Rs.5,000/- towards transportation to hospital, Rs.5,000/- towards nutrition and extra nourishment, Rs.30,000/- towards pain and suffering and hence, the total compensation awarded by the Tribunal is Rs.9,76,000/-.

15 As per the decision of Constitution Bench Judgment of Honourable Supreme Court reported in ***2017 (2) TN MAC 609 (SC) – [National Insurance Company Limited Vs. Pranay Sethi and others]***, the claimant is entitle for 25% towards future prospects. Accordingly, loss of income is reassessed as under:

Rs.6,000 + Rs.1,500 (25% of 6,000) = Rs.7,500/-

Hence, the pecuniary loss is reassessed as

Rs.7,500 x 12 x 13 =Rs.11,70,000/-

The Tribunal has not awarded any amount towards attendant charges and hence it would be appropriate to award a sum of Rs.7,000/-. It would also be appropriate to award a sum of Rs.15,000/- towards loss of amenities. Accordingly, the compensation awarded by the Tribunal is re-assessed as under:

Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (in Rs.)
Future loss of earning capacity	9,36,000.00	11,70,000.00
Transportation	5,000.00	5,000.00
Nutrition and Extra nourishment	5,000.00	5,000.00
Pain and suffering	30,000.00	30,000.00
Loss of amenities	-	15,000.00
Attendant charges	-	7,000.00
Total	**9,76,000.00**	**12,32,000.00**

Hence, the compensation awarded in MCOP405 of 2008 is re-assessed and enhanced from Rs.9,76,000/- to 12,32,000/-.

16 In the result:

(i) CMA.No.1767 of 2012 filed by the claimant viz., S.Radhakrishnan, is partly allowed to the limited extent and the compensation awarded by the Tribunal is enhanced from Rs.9,76,000/- to Rs.11,32,000/-.

(ii) In this view of the matter both the CMA.Nos.2153 and 2154 of 2012 filed by the Insurance Company stands allowed to the limited extent that the Insurance Company is exonerated from the liability and the owner of the vehicle viz., S.Mani has to pay the quantum of compensation.

(ii) The award amount will carry interest at the rate of 7.5% per annum.

(iii) The owner of the vehicle is directed to deposit the award amount as ordered by this court, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iv) On such deposit, the claimants are permitted to withdraw the amount awarded by this Court with proportionate interest, less the amount already withdrawn, if any.

(v) The Insurance Company is permitted to withdraw any amount deposited by them/and if any amount is already withdrawn by the claimant, it is to open to recover the same from the respective claimants before Executing Court.

(v) The claimants shall pay necessary Court fee, if any, on the enhanced compensation. No costs.

05.08.2019

Index : Yes / No
Internet : Yes
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To

1.The Motor Accidents Claims Tribunal,
the learned Chief Judge of Small Causes Court,
Chennai.

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

RMT.TEEKAA RAMAN, J.

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Pre-Delivery Judgment

in

C.M.A.Nos.1767, 2153 &

2154 of 2012

05.08.2019