IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2019
PRONOUNCED ON : 18.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.Nos.2812 of 2015, 2150 of 2018
and M.P.No.1 of 2015

United India Insurance Company Ltd.,
Divisional Office - 1,
104-A, Peramanur Road,
Salem - 7 ... Appellant in both CMA's/2nd Respondent

Vs.

1.Samiyappan ..1st Respondent/claimant
2.Mahendran ..Respondent 2/Respondent 1 (in CMA.2812 of 2015)

1.M.Malliga
2.Amitha Beevi
3.Sivalingam
4.Sri Ram General Insurance Co., Ltd.,
First Floor, Front Portion, No.5F,
Sachin Plaza, Reddiar Block - No.1,
Salem - 636 016. ... Respondents (in CMA 2150 of 2018)

Prayer in CMA 2812 of 2015: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 29.04.2014 made in O.P.No.9 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Mettur.

Prayer in CMA 2150 of 2018: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 27.02.2018 made in M.C.O.P.No.281 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), Salem.

For Appellant in both CMAs : Mr.D.Bhaskaran

For Respondent 1 in CMA 2812/2015 : Mr.R.Muruga Bharathi

For Respondent 2 in CMA 2812/2015 : Mr.K.S.Karthik

For Respondent 1 in CMA 2150/2018 : Mr.S.P.Yuvaraj

For Respondent 4 in CMA 2150/2018 : Mr.S.Dhakshnamoorthy

COMMON JUDGMENT

C.M.A.No.2812 of 2015 has been preferred against the Award and Decree dated 29.04.2014 made in O.P.No.9 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Mettur.

C.M.A.No.2150 of 2018 has been preferred against the Award and Decree dated 27.02.2018 made in M.C.O.P.No.281 of 2012 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.2), Salem.

2.C.M.A.No.2812 of 2015 has been preferred by the Insurance Company as appellant. Aggrieved by the award of the Tribunal, the appellant contended that the Tribunal has awarded a huge sum of Rs.6,00,000/- as compensation is not justified. The Tribunal has not adjudicated the aspect of liability properly inspite of material evidence. The Tribunal also failed to note that the insurer can be made liable only to accident of nature of contract. The other grievances raised by the appellant is that the assessment of Doctor P.W.2 is highly exaggerated and the certificate as no basis. Without conducting necessary examination and reflecting the correct position, the said certificate was issued by the Doctor and hence, it cannot be considered. The Tribunal has also failed to observe the fact that after the accident continuous treatment taken by the injured person. However, the alleged injuries cannot attract such a huge disability as assessed by P.W.2. The sum awarded by the Tribunal towards injuries at Rs.1,20,000/- and towards partial disability at Rs.2,25,000/- are all highly improper, without any basis. The award made by the Tribunal under the head of mental agony and suffering at Rs.50,000/- and further the sum of Rs.1,00,000/- towards pain and sufferings are all without any basis and reason. Hence, on the whole, the award made by the Tribunal is highly excessive and contrary to the guidelines laid down by the Supreme Court as well as High Court and that to the sum awarded for Loss of Income of Rs.75,000/- is also without any basis and materials.

3.The claimant has preferred the claim application for the injuries sustained by him on 31.12.2012 at about 19.00 hours while he was travelling in an auto bearing Registration No. TN 68 5773 as a passenger, after his coolie work and when the auto was nearing Dalmia Road, Salem to Omalur main Road, the said auto hit the Eicher Lorry bearing Registration No. TN 30 AZ 4330 which was proceeding in front of the auto. The said accident was caused only due to the rash and negligent manner and uncontrollable speed driving of the driver of the auto. The petitioner fell down and sustained grievous injury including fracture. Hence, the petitioner claimed a sum of Rs.20,00,000/- as compensation under the various heads as Loss of Income, Disability, Pain and Sufferings, Medical Expenses and the Loss of Amenities.

4.On the other hand, the second respondent / Insurance Company denied the mode of accident as contended by the claimant. The respondent / Insurance Company also denied the injuries sustained by him and also the claim made by the injured person as an excessive one. The Insurance Company also contended that the Insurance Policy for the said vehicle stands in the name of Amitha Beevi, but in the claim application owner is not added as a necessary party. Hence, the Insurance Company is not liable to pay the compensation. The other averment made by the Insurance Company is that the petitioner sustained only simple injuries and the claim of Rs.20,00,000/- is a huge amount without any basis.

5.The Tribunal after hearing of both sides, observed the documents placed before the same, has discussed the negligence aspect elaborately by verifying the FIR Ex.P1 and has given a finding that the driver of the auto was responsible for the accident due to his rash and negligent driving. The claimant being the passenger in the said auto has deposed before the Tribunal that the driver of the said auto had driven the same in the rash and negligent manner and caused the accident. The Tribunal has fixed the negligence on the driver of the auto.

6.The Tribunal has also analysed the evidence let in by the petitioner and also the document Ex.P4 the Policy of the said vehicle and also Ex.P5 the driving license of the auto driver. The Tribunal has also observed the fact that the first respondent / owner of the said vehicle was set exparte before the Tribunal. While deciding the negligence aspect on the driver of the auto, the owner of the said vehicle had not appeared before the Tribunal.

7.Further the claimant has made the claim only against the first respondent and the Insurance Company in which the said auto was insured at the time of accident. FIR was also registered against the driver of the auto and the documents relating to the vehicle stands in the name of one Amitha Beevi and it was not transferred to the first respondent name. The evidence of R.W.1 clearly proves the fact that the said auto caused the accident insured with them and further the first respondent Mahendran viz., the owner of the said vehicle also denied by the first respondent driver.

8.While determining the compensation the Tribunal has observed the documents Ex.P2 the discharge summary issued by the Manipal Hospital and also the discharge summary issued from the Salem Government Hospital and the Medical Bills which all very much prove the fact that the claimants sustained injuries. While he was thrown away from the auto and he was also treated as inpatient from 01.01.2012 to 02.02.2012. For the said injuries surgery was also done to him and his two fingers were also removed in the left hand and he was a hale and healthy person before the accident and prior to the accident the injured person was also working as a coolie under one Balan and he was earning Rs.10,000/- per month and he claimed a sum of Rs.20,00,000/-, as even after the surgery he suffering from severe Pain and the Tribunal has observed the evidence as well as documents and has awarded a sum of Rs.6,00,000/- as compensation under the following heads.

S.No.	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income for injuries	1,20,000
2.	Transportation	5,000
3.	Nourishment	12,000
4.	Damage of Articles	3,000
5.	Medical Bills	10,000
6.	Shock and Sufferings	50,000
7.	Pain and Sufferings	1,00,000
8.	Partial Disability	2,25,000
9.	Loss of Income	75,000
	Total	Rs.6,00,000/-

9.The grievances of the appellant herein is that when the Doctor had issued the disability certificate has deposed before the Tribunal that ''mtuJ FWf;F tprhuizapYk; nkw;go 3 fha';fspy; 1. 2 fha';fs; bfhL';fha';fs;. 3tJ fhak; rhjhuz fhak; 1. 2 fha';fSf;F nrh;j;J 63# bfhLj;Js;nsd; ,J epue;ju Cdk; my;y/'' Based on the said evidence of P.W.2 the Tribunal has also accepted the said disability by given a finding that in the absence of any contradictory evidence on the side of the respondent. The assessment of 63% assessed by the Doctor cannot be disputed.

10.When the observation by the Tribunal is sought that the sum awarded under the head for the injury and the Loss of Income the Tribunal has awarded a sum of Rs.1,20,000/- and another sum of Rs.2,25,000/- for Partial Disability is highly excessive and unwarranted when already the Tribunal has awarded a sum of Rs.1,20,000/- for loss of income for injury. Another Sum at Rs.2,25,000/- for partial disability is highly improper and unwarranted. When it is observed that the Tribunal has awarded Rs.1,20,000/- for loss of Income and without giving any reason and also the basis for arriving the said Sum of Rs.2,25,000/- for Partial disability the said amount appears to be a improper one. The Tribunal has not furnished any reason for awarding such a amount, in the absence of any evidence as well as discussion made by the

Tribunal in that aspect. Hence, the said sum awarded under the head is set aside. It is also vehemently contended by the appellant that when the Tribunal has awarded a sum of Rs.50,000/- for shock and sufferings and another sum for Pain and Sufferings Rs.1,00,000/- also very much contended by the appellant as a improper one. Without any basis the Tribunal has awarded twice a amount under two different heads.

11.While awarding the said sum the Tribunal has not given any reason for awarding two sums as shock and sufferings and pain and sufferings. Hence, the sum awarded under the head, shock and sufferings is set aside. The Tribunal has awarded a sum of Rs.75,000/- as loss of income and the said sum is also awarded by the Tribunal without assigning any reason for the same. However, when it is observed that the injured respondent was treated as inpatient from 01.01.2012 to 02.02.2012 and the nature of injury is also such that there is a fracture in the forum and also loss of two fingers and occupation of the respondent / claimant is also one as coolie. The loss of income during the period of treatment of recovery till he resumed his work has to be properly considered by awarding a sum of Rs.36,000/- by taking the monthly income at Rs.6,000/-. The said sum would be very much reasonable has to be awarded.

12.On the other hand, the respondent / claimant contended that the sum awarded by the Tribunal under the various heads are very much reasonable, when the nature of injury, the sufferings underwent by him both financially, physically and mentally are appropriately considered by the Tribunal. But the Tribunal has awarded a sums under various heads without assigning any reason has to be properly considered. Hence, in view of awarding sums by ways of modification, this Court inclined to award to the following sums under the various heads.

S.No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income for injuries	1,20,000	1,20,000	Confirmed
2.	Transporation	5,000	5,000	Confirmed
3.	Nourishment	12,000	12,000	Confirmed
4.	Damage of Articles	3,000	3,000	Confirmed
5.	Medical Bills	10,000	10,000	Confirmed

6.	Shock and Sufferings	50,000	-	Vacated
7.	Pain and Sufferings	1,00,000	50,000	Reduced
8.	Partial Disability	2,25,000	-	Vacated
9.	Loss of Income	75,000	36,000	Reduced
10.	Attenders Charges	-	20,000	Awarded
11.	Loss of Amenities	-	40,000	Awarded
	Total	Rs.6,00,000/-	Rs.2,96,000/-	Reduced by Rs.3,04,000/-

13.The C.M.A.No.2150 of 2018 has been preferred by the Insurance Company, aggrieved against the Judgment and Decree made by the Tribunal by fixing the liability on the appellant.

14.The appellant contended that the Tribunal has committed error in granting a huge sum of Rs.1,60,000/- as compensation. The Tribunal failed to adjudicate the issue on liability aspect, by verifying the seating capacity of the vehicle in question and the nature of contract. Further the Tribunal failed to consider the fact that the insurer can be made liable only to the accident of nature of contract. The seating capacity of the vehicle in question itself is four persons including the driver and the policy is only liability policy / statutory policy and premium for Rs.15,000/- paid for passengers within seating capacity of passengers.

15.Further the grievances of the appellant is that already the appellant was made liable to 3 passengers that is to the extension of the said liability, the award made in this claim petition has to be set aside.

16.The respondent / claimant claims himself as a coolie and he was earning Rs.6000/- per month and the injuries sustained by him are grievous in nature and she also underwent surgery which made her permanently disabled and the respondent / claimant claimed a sum of Rs.10,00,000/- as compensation for the loss of income, medical expenses and other related loss and inconveniences sustained by the respondent.

17.The appellant / Insurance Company in the counter statement denied the mode of accident as stated by the claimant in the claim application. The respondent further contended that when the driver of the auto was driving the said vehicle in a rash and deligent manner which is the Eicher

Lorry bearing Registration No.TN 30 AZ 4330 which was proceeding ahead of the auto and driver of the said vehicle applied sudden break without any signal and the auto driver was unable to stop his vehicle and dashed on the rear side of the Mini Lorry and the passengers in the auto sustained injuries. Hence, the Eicher Lorry driver also contributed the accident and the quantum should be reduced in terms of composite negligence.

18.The respondent further contended that the owner and insurer of the Eicher Lorry is not impleaded as necessary parties and that claim has to be dismissed. Further contentions by the respondent is that at the time of the accident 6 persons travelled in the 1st respondent's auto, the respondent / Insurance Company denied the liability on behalf of the owner and on the basis of contractual liability. The other aspect regarding the sum claimed by the claimant at Rs.10,00,000/- under various heads is also denied as an excessive one.

19.The Tribunal after analysing the evidence and documents relates before the same regarding the negligence as well as compensation, the Tribunal has fixed the negligence on the driver of the auto and the Tribunal has also awarded a sum of Rs.1,60,023 under the following heads.

S.No.	Description	Amount awarded by Tribunal (Rs)
1.	Partial Permanent Disability	30,000
2.	Pain and Sufferings	10,000
3.	Loss of Amenities	7,500
4.	Medical Expenses	83,523
5.	Loss of Income during treatment period of recovery	11,000
6.	Transportation Expenses	5,000
7.	Nourishment	5,000
8.	Attenders Charges	7,500
9.	Damages to Clothes	500
	Total	Rs.1,60,023/-

20.The appellant herein has contended in the appeal that the said vehicle which caused the accident insured with this appellant and the policy is only a liability policy by stating that at the time of accident the owner of the auto bearing Registration No. TN 68 5773 took the policy to cover the third party alone and no premium was paid to cover, the risk of the passengers of the auto. Hence, this appellant has no contractual liability to pay compensation to the petitioner on behalf of the insured since there is no policy coverage. Further it is argued by the appellant that at the time of accident 6 persons travelled in the auto, when the permit is one for only four persons and here there is a pure violation of policy and permit conditions.

21.On hearing both sides and also on perusal of records it is observed that the negligence aspect was fixed on the driver of the auto by verifying the FIR and the evidence of the claimants. The claimant clearly deposed before the Tribunal that "kDjhuh; 1tJ vjph; kDjhuUf;F brhe;jkhd tz;oapy; gazk; bra;J bfhz;oUe;j nghJ yhhpapd; Xl;Ldh; mjpntfkhft[k; m$hf;fpuijahft[k; Xl;o brd;W nkhj Kw;gl;l nghJ kDjhuUf;F fhak; Vw;gl;ljhft[k; Twpa[s;shh;/" The Tribunal has also observed the evidence of the claimant that already the FIR was registered against the driver of the said auto by the Omalur Police Station, Salem District in Crime No. 2 of 2012 and further to the same the Tribunal has also given a finding. The Tribunal has disposed 3 claim applications arising out of the very same Crime number in M.C.O.P.Nos.169 of 2012, 170 of 2012 and 19 of 2012 by Motor Claims Tribunal. Regarding the liability of this appellant at the time of accident 6 persons travelled in the said auto, whereas the seating capacity is 4 persons including the driver and hence, this Insurance Company is not liable to pay the compensation.

22.On the side of the appellant Ex.R1 the Policy was filed before the Tribunal and Ex.R3 to Ex.R7 the Judgments of the Tribunal relating to the persons travelled in the seating capacity in awarding compensation of 3 passengers travelled in the auto and sustained injuries and Ex.R1 is the Policy. The Policy is also very much observed but inspite of the clear reference made in the said policy, the Tribunal has interpreted the same as (PCV 3 wheeler not exceeded 6 passengers and liability only Policy). Further the Tribunal has also observed that there is no evidence or documents to prove that more than 3 claims were made, when already the Judgments were also filed on the side of the respondent. The observation made by the Tribunal is not proper.

23.In view of the fact that the vehicle involved in the said accident is one auto and the seating capacity is also very much mentioned in the said policy and it is also clearly placed before the Tribunal that already 3 claims were made by 3 persons and the Tribunal has also awarded the same, this claim application is 4th application and automatically it amounts to liability which is against the contractual liability. Hence, the observation made by the Tribunal is not a reasonable one and the appellant herein is aggrieved against the said observation.

24.When it is clearly proved by filing the said policy and also the coverage and already 3 awards are also made the ground of violation of terms and conditions of the policy by taking 6 persons in the said auto as against the seating capacity of 4 persons including the driver, the appellant herein need not be made liable to pay the compensation. Hence, in view of the fact as well as the evidence and documents placed on the side of the appellant there is violation of terms and conditions of the policy and further this claim is the 4th claim for which the appellant / Insurance Company is not liable and only the owner of the said vehicle is liable to pay the compensation. Since this is the 4th claim application which is beyond the contractual liability and the owner of the said vehicle is liable to pay the compensation.

25.Regarding the sum awarded by the Tribunal, the respondent / claimant contended that the nature of injuries are such that when the claimant was admitted in the Salem Manipal Hospital from 31.12.2011 to 05.01.2012 and surgery was also done to him, the assessment made by the

Tribunal at 10% is not proper and the award made by the Tribunal under the said aspect by taking 10% disability is very much meagre. Further the respondent also contended that when there is a functional disability caused by the said injuries sustained by the petitioner, the sum awarded by the Tribunal at Rs.30,000/- and the sum awarded under other heads are also not a reasonable one and they are not just compensation when it is clearly proved that the respondent sustained the grievous injuries, fractures and surgeries also done to him.

26.On perusal of the disability certificate issued by the Medical Board the Tribunal has awarded Rs.30,000/- which is very much reasonable and verifying the inconveniences sustained by him during the period of treatment, apart from Loss of Income, the Tribunal has appropriately considered all the related expenses and inconveniences and awarded reasonable sum. The Tribunal has also awarded a sum of Rs.10,000/- for Pain and Sufferings, Loss of Amenities Rs.7,500/- is very much reasonable, the same awarded for Medical Expenses by Ex.P5 series of Rs.83,523/- is also very much appropriate. It does not require any modification as the Tribunal has properly assessed disability and also inconveniences, loss of expenses sustained by the respondent and the award is a reasonable one. It does not require any modification regarding the liability part also. Hence, above discussion, the sum awarded by the Tribunal under various heads and the liability fixed on the appellant is very much proper and reasonable and does not require any modification by this Court. Accordingly, the Judgment and Decree passed by the Tribunal is confirmed.

27.In the result,

(i) The C.M.A.No.2812 of 2015 is partly allowed and the compensation awarded by the Tribunal at Rs.6,00,000/- is reduced to Rs.2,96,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. No Costs.

(ii) In C.M.A.No.2812 of 2015 the 1st respondent / claimant is entitled to a sum of Rs.2,96,000/- with interest at the rate of 7.5% per annum. The appellant / Insurance Company is directed to deposit the award amount modified by this Court, less the amount already deposited.

(iii) The C.M.A.No.2150 of 2018 is dismissed. The Judgment and Decree passed by the Tribunal in M.C.O.P.No.281 of 2012 dated 27.02.2018 is confirmed. No costs.

(iv) Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rna
To

1.The Sub Court,
The Motor Accidents Claims Tribunal,
Mettur.

2.The Special Sub Court No.2,
The Motor Accidents Claims Tribunal,
Salem.

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

+1cc to Mr.D.Bhaskaran, Advocate SR.No.80519

+1cc to Mr.R.Muruga Bharathi, Advocate SR.No.80519

+1cc to Mr.K.S.Karthik, Advocate SR.No.80503

C.M.A.Nos.2812 of 2015,
2150 of 2018
and M.P.No.1 of 2015

RK(CO)
GMT(12/06/2020)