

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 18.03.2019

Judgment Pronounced on : 10.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.599 & 648 of 2012
and
Mp.Nos.1 & 1 of 2012 (2 cases)
and
CMA.Nos.1978 & 2012 of 2012

C.M.A.Nos.599 & 648 of 2012:-

M/s.National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai - 2.

... Appellant
in CMAs.599 & 648/2012
Versus

1.T.K.Sambandam ... 1st Respondent
in CMA.599/2012

1.G.Subramani ... 1st Respondent
in CMA.648/2012

2.M/s.The Sri Krishna Trust,
No.1, Manickeswari Road,
Kilpauk, Chennai - 10.

3.A.Venis Kumar ... 2nd & 3rd Respondent
in CMA.599 & 648/2012

CMA.Nos.1978 & 2012 of 2012:-

T.K.Sambandam ... Appellant
in CMA.1978/2012

G.Subramani ... Appellant
in CMA.2012/2012
Versus

1.M/s.The Sri Krishna Trust,
No.1, Manickeswari Road,
Kilpauk, Chennai - 10.

2.M/s.National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai - 2.

3. A.Venis Kumar

... Respondents
in CMAs.1978 & 2012/2012

Common Prayer :-

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.10.2011 made in M.C.O.P.Nos.2541 & 2264 of 2005 respectively, on the file of the Motor Accidents Claims Tribunal, (Small Causes Court - IV Judge) at Chennai.

For Appellant : Mr.J.Chandaran

in CMA.599 & 648/2012

For Respondents : Mr.A.Shanmugaraj
(for R1 in CMA.599 & 648/2012)
:(for Appellant in
CMA.1978 & 2012/2012)

COMMON JUDGMENT

All the four appeals are arising out of the Common Judgement dated 21.10.2011 rendered by the Motor Accidents Claims Tribunal, (Small Causes Court - IV Judge) at Chennai in M.C.O.P.Nos.2541 & 2264 of 2005 respectively.

2.The Insurance company has filed CMA.No.599 & 648 of 2012 as against the claimants in CMA.Nos.1978 & 2012 of 2012, seeking enhancement of compensation.

3.Both the claim petitions in MCOP.Nos.2264 & 2541 of 2005 have been filed in respect of the injured claimants in the very same accident, a joint Trial was conducted, Common evidence was let in and the Common Judgment was pronounced by the Tribunal. Aggrieved against the very same Common Judgment, the claimants and the Insurance company have filed these appeals. Hence, these appeals are taken up for final disposal together by passing Common Judgment.

4.CMA.Nos.599 & 648 of 2012, these two appeals have been preferred by the National Insurance company limited, challenging the award passed in the above said claim petitions, on the ground of liability and quantum of compensation as well.

5.For the sake of convenience as per the claim petitions, the parties ranks are mentioned in these appeals.

6.Facts averred by the claimants/petitioners in MCOP.Nos.2264 & 2541 of 2005:-

On 19.12.2004 at about 12.00 hours, they were standing in front of Nalli shop at Pinjala Subramaniam Street, T.Nagar, Chennai, at the time, a Maruthi Omini Van, bearing Registration No.TN-01-U-9633, which was owned by the first respondent/M/s.The Sri Krishna Trust and it was insured with the second respondent/National Insurance company was driven by the third respondent/driver of the first respondent, in a rash and negligent manner and hit against the claimants. In the impact, the claimants have sustained serious injuries.

According to the claimants, the accident occurred only due to rash and negligent driving of the driver of the first respondent, whose vehicle was insured with the second respondent, and hence, they are jointly and severally liable to pay compensation. Therefore, the claimants have filed claim petitions in MCOP.Nos.2264 & 2541 of 2005, claiming a sum of Rs.4,00,000/- each as compensation and which was restricted to Rs.2,00,000/- respectively.

7.The factum, the manner of the accident and rash and negligent driving on the part of the driver of the first respondent's vehicle are not in dispute. Hence, the finding rendered in this regard, by the Tribunal is hereby confirmed.

8.The learned counsel appearing for the Insurance company, in both the appeals submitted that at the time of accident, the driver of the Maruthi Omini Van does not have valid license. Hence, he prayed before this Court to exonerate them from liability and further, he stated that the Insurance company is not liable to pay compensation to the claimants.

9.The Insurance company has filed a counter statement before the Tribunal and raised a specific plea that the driver of the Maruthi Omini Van, A.Venish kumar does not possess valid and effective licence to driver the above said vehicle at the time of accident. A case was also registered against the driver of the said vehicle by the Traffic Investigation Department, R-4, Bondy Bazaar Police Station, under Section 337 of IPC, three counts and Section 184 r/w 181 of the Motor Vehicles Act in Crime No.438/TN2/2004. Therefore, the learned counsel for the Insurance company has stated that they are not liable to pay compensation to the claimants.

10.Before the Tribunal, the claimant in MCOP.No.2264 of 2005 was examined as PW.1, the claimant in MCOP.No.2541 of 2005 was examined as PW.2 and Dr.K.J.Mathiazhagan examined as PW.3, Dr.Saichandran examined as PW.4. On the claimants' side, thirteen documents, namely Exs.P1 to P13 were marked. On the respondents side, two witnesses were examined as RW.1 & RW.2 and seven documents were marked as Exs.R1 to R7.

11.It appears that the Tribunal rendered the finding that in support of Ex.R1/copy of charge sheet and Ex.R2/M.V report and Ex.R7/Copy of legal notices with acknowledgments issued to the first and second respondents viz., the driver and the owner of the offending vehicle, but they are not come and produce the driving license of the driver at that time of accident. Hence, the Tribunal held that the Insurance company has to prove in the manner known to law, the driver has not holding valid driving license at the time of accident. However, taking note of the decision rendered in the case of United India Insurance Co. Ltd., Vs. S.Saravanan and another reported in 2009 (2) TN MAC 103 (DB), as held that in so far as the claimants/petitioners are third party, the insurer amounts to pay and proceed against the insured/owner. Accordingly, applied the said ratio laid down in the decision and directed

the Insurance company to pay the award amount and the same could be recovered from the owner of the vehicle, hence, the finding rendered before the Tribunal, does not call for any interference and the same is hereby confirmed.

12.The respective claimants have preferred these appeals in CMA.Nos.1978 & 2012 of 2012, seeking enhancement of compensation. According to the Insurance company, which is on the higher side.

13.I have heard the rival parties submissions on the point of compensation and perused the records.

14.It is seen that the claim petitioner in MCOP.No.2264 of 2005 was examined PW.1/ Subramani/appellant in CMA.No.2012 of 2012, and Exs.P2 & P3/ OP chits of Subramani, Ex.P4/Medical prescription, Ex.P5/Salary Certificate and Ex.P13/Disability certificate shows that he suffered fracture on right ankle medial malleolus. BK slab applied and contusion on right chest wall also. He was aged 56 years and working as Security Guard and was earning a sum of Rs.2,850/-per month. From the medical records, it is clearly visualized that there was no surgery has been conducted for his injuries. He took only conventional orthopaedic treatments and he has taken only one day treatment in the hospital. Therefore, the Tribunal assessed the loss of income for three months and granted a sum of Rs.8,550/-. Taking into consideration of the evidence of PW.4/Dr.Saichandran, who had issued the disability certificate under Ex.P13 by fixing disability at 30%. But, the Tribunal awarded a sum of Rs.50,000/- for 25% of disability and under the other conventional heads award amounts are also would be fair and reasonable. Hence, this Court finds that the quantum of compensation is not on the higher side as pleaded by the Insurance company. However, considering the age of the claimant, the Tribunal did not award any amount towards loss of amenities and the same is hereby awarded to Rs.10,000/- under the same head. Except this modification, the compensation amount awarded by the Tribunal under other heads remain unaltered. The breakup details of the same are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.8,550/-	Rs.8,550/-
Transport to Hospital	Rs.3,000/-	Rs.3,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Medical Expenses	-	-
Pain and suffering	Rs.20,000/-	Rs.20,000/-
Permanent disability	Rs.50,000/-	Rs.50,000/-
Loss of amenities	-	Rs.10,000/-
Total	Rs.86,550/-	Rs.96,550/-

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15.It is seen that the appellant/T.K.Sambandam in MCOP.No.2541

of 2005 has preferred this appeal CMA.No.1978 of 2012, seeking enhancement of compensation. As per the medical records of Ex.P6 & P7/OP chits of Sambantham, Ex.P8/Scan report, the injured claimant/PW.2 in the said claim petition was examined by PW.3/Dr.Mathiazhagan, who had assessed the claimant's disability at 40% and issued the Disability certificate under Ex.P11. After going through the medical records, the claimant sustained multiple ribs fracture at left side subcutaneous emphysema with left pleural effusion.

16.It could be seen from the above said documents and the Doctor's deposition that the claimant had suffered 40% of disability in the said accident. Based upon the evidence of PW.3/Doctor, this Court is of the considered view, that 40% of disability assessed by the Doctor is hereby accepted and awarded accordingly a sum of Rs.80,000/- towards disability at the rate of Rs.2,000/- per percentage. Considering the age and avocation of the claimant, the loss of income and the other conventional heads of award amounts granted by the Tribunal is appears to be reasonable. However, this Court is inclined to enhance the award amounts under the heads, a sum of Rs.5,000/- each for Transportation, Extra-nourishment. The Tribunal did not award any amount towards loss of amenities and attender charges and the same has to be awarded at Rs.10,000/- and Rs.5,000/- respectively. Except these modifications, the compensation amount awarded by the Tribunal under other heads remain unaltered. The breakup details of the same are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of Income	Rs.11,400/-	Rs.11,400/-
Transport to Hospital	Rs.3,000/-	Rs.3,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Medical Expenses	-	-
Pain and suffering	Rs.25,000/-	Rs.25,000/-
Permanent disability	Rs.70,000/-	Rs.70,000/-
Loss of amenities	-	Rs.10,000/-
Attender charges	-	Rs.5,000/-
Total	Rs.1,14,400/-	Rs.1,29,400/-

17.In the result,

(i) the appeals in CMA.Nos.2012 & 1978 of 2012 filed by the claimants are allowed to the extent indicated above.

(ii) the compensation awarded by the Tribunal at Rs.86,550/- in MCOP.No.2264 of 2005 is hereby enhanced to Rs.96,550/- and the compensation awarded by the Tribunal at Rs.1,14,400/- in MCOP.No.2541 of 2005 is hereby enhanced to Rs.1,29,400/-. Both the amounts shall carry interest at the rate of 7.5% per annum from the date of numbering the claim

petitions and till the date of deposit, within two months from that date i.e., 05.07.2005.

(iii) the Insurance company is directed to deposit the modified and enhanced award amounts along with interest and costs, less the amounts, if any already deposited, within a period of eight weeks from the date of receipt of a copy of this Common Judgement.

(iv) On such deposit being made, the claimants in the both appeals, are permitted to withdraw the modified and enhanced award amounts along with interest and costs, after adjusting the amounts if any, already withdrawn by them.

(v) the claimants in the both appeals shall pay necessary court fee, if any, on the enhanced compensation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

klt
To

1.The Motor Accidents Claims Tribunal,
(Small Causes Court - IV Judge) Chennai.

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

+2cc to Mr.A.Shanmugaraj, Advocate, S.R.No.58434

Pre-delivery Judgment in
C.M.A.Nos.599 & 648 of 2012

and
Mp.Nos.1 & 1 of 2012 (2 cases)
and
CMA.Nos.1978 & 2012 of 2012

AD(CO)
GSP(18/12/2020)

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