IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.59 and 60 of 2015
and M.P.Nos.1 and 1 of 2015

M/s. Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, 1st Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem - 636 004,
Salem Taluk & District. ... Appellant in both appeals

Vs

S.Palanisamy .. 1st respondent in C.M.A.No.59 of 2015

Pavayee .. 1st respondent in C.M.A.No.60 of 2015

K.Ramesh .. 2nd respondent in both the appeals

C.M.A.No.59 of 2015 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 21.11.2011 made in MCOP No.63 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

C.M.A.No.60 of 2015 filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 21.11.2011 made in MCOP No.64 of 2010 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

For Appellant : Mr.N.Vijayaraghavan

For R-1 : Mr.C.Kulanthaivel

For R-2 : No appearance

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the Insurance Company against the awards of a sum of Rs.1,70,000/- towards compensation to the first respondent in C.M.A.No.59 of 2015 and Rs.1,50,000/- towards compensation to the first respondent in C.M.A.No.60 of 2015, due to the injuries sustained by them in a motor vehicle accident.

2.The case in brief, is as follows:

On 13.04.2009 at about 2.00 pm, the first respondent in CMA.No.59 of 2015 was riding his TVS 50 moped bearing Registration No.TN-27-V-2834 along with one Pavayee who is the first respondent in CMA.No.60 of 2015 as a pillion rider. When he was proceeding from Maniyakaranur Colony to Poolampatty, near Kattoor bridge, a milk van Tata ACE vehicle bearing registration No.TN-52-6190 belonging to the second respondent and insured with the appellant insurance company, came in a rash and negligent manner and hit the moped from behind. Due to the said impact, the first respondent in these appeals sustained grievous injuries. They filed claim petitions claiming compensation before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.1,70,000/- and Rs.1,50,000/- respectively, with interest at the rate of 7.5% per annum from the respective dates of the petitions.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeals.

4.The learned counsel for the appellant Insurance Company submitted that the Tribunal has erred in fixing the entire liability on the appellant Insurance Company, since the driver of the Tata ACE van bearing Reg.No.TN-52-6190, was not having valid and effective driving licence at the time of accident and hence, the Insurance Company is not liable to pay any compensation to the first respondent(s)/claimants. He also submitted that the compensation awarded by the Tribunal is excessive and exorbitant.

5.The learned counsel for the first respondent in these appeals submitted that the Tribunal has rightly considered the materials and evidence and has awarded the just and fair compensation and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent in these appeals and perused the materials available on record carefully and meticulously.

7.It is seen from the award that P.W.1 and P.W.2/claimants have deposed that the accident had occurred only due to the rash and negligent driving of the driver of the van bearing Reg.No.TN-52-6190. Ex.P1-First Information Report corroborated the same. Further, Ex.P11 charge sheet was filed against the driver of the van. Ex.P9 & Ex.P10 - Motor Vehicle Inspector's reports reveal that the accident had not happened due to any mechanical defect of the Tata Ace van. Hence, the Tribunal has rightly come to the conclusion that the accident had occurred only due to the rash and negligent act on the part of the driver of the Tata Ace van, which finding this Court is not inclined to interfere.

8.As regards the finding of the Tribunal on liability, it was putforth on the side of the appellant insurance company that the driver of the Tata ACE van was not possessing valid and effective driving licence at the time of accident. To substantiate their stand, they examined R.W.1 and marked Exs.R1 to R3 documents. R.W.1 has deposed in her evidence that though the insurance company sent a communication to the owner of the vehicle to produce the original/copy of the driving licence of the driver, he did not respond to the same and thereby, the owner of the vehicle violated the policy conditions and hence, the insurance company is not liable to pay compensation to the claimants. Admittedly, no driving licence was produced and the owner of the vehicle remained exparte before the Tribunal. As such, this Court is of the view that the owner of the vehicle has violated the policy conditions by permitting the driver who did not possess the valid driving licence, to drive the vehicle at the time of accident. However, Ex.P12 : Ex.R1 -insurance policy covers the risk of the offending vehicle. In such circumstances, this Court feels it fit and appropriate to direct the insurance company to pay the compensation to the claimants at the first instance and then recover the same from the owner of the vehicle in the manner known to law. Accordingly, the finding of the Tribunal is modified to that effect.

9.With regard to the quantum of compensation relating to the injured in CMA No.59 of 2015, the first respondent/claimant himself examined as P.W.1, who deposed that at the time of accident, he was 35 years and was earning Rs.6,000/- per month as a Tractor driver-cum-Agriculturist. P.W.3/doctor deposed that he examined the first respondent/claimant and assessed his permanent disability at 40% and issued Ex.P19 permanent disability certificate. As per Ex.P20- X-ray, the first respondent/claimant sustained injuries all over the body. Having regard to those oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.1,70,000/- i.e., Rs.74,000/- for permanent disability, Rs.20,000/- for pain and suffering, Rs.3,400/- for medical expenses as per Ex.P5 medical bill, Rs.15,000/- for Extra nourishment, Rs.5,000/- for

Attendant charges, Rs.5,000/- for transportation charges, Rs.5,000/- for loss of amenities, Rs.54,000/- for loss of income during treatment period, which in the opinion of this Court, are fair, just and reasonable and the same cannot be treated as excessive or exorbitant, at any stretch of imagination and hence, the same are hereby confirmed.

10.With regard to the quantum of compensation relating to the injured in CMA No.60 of 2015 the first respondent/claimant herself examined as P.W.2, who deposed that at the time of accident, she was 50 years and was earning Rs.4,500/- per month as an Agricultural coolie. P.W.4/doctor deposed that he examined the first respondent/claimant and assessed her permanent disability at 30% and issued Ex.P22 permanent disability certificate. Ex.P23 is X-ray. Having regard to those oral and documentary evidence, the Tribunal has awarded a total compensation of Rs.1,50,000/- i.e., Rs.52,500/- for permanent disability, Rs.25,000/- for pain and suffering, Rs.11,500/- for medical expenses as per Ex.P15 medical bill, Rs.20,000/- for Extra nourishment, Rs.5,000/- for Attendant charges, Rs.5,000/- for transportation charges, Rs.5,000/- for loss of amenities, Rs.27,000/- for loss of income during treatment period. This Court is of the opinion that the compensation so awarded are based on the materials and evidence adduced by the first respondent/claimant and are just and reasonable and hence, the same need not be interfered.

11.In the result, the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed. The appellant Insurance Company is directed to deposit the award amounts as ordered by the Tribunal with interest and costs, after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and thereafter, recover the same from the owner of the vehicle in accordance with law. On such deposit, the first respondent(s)/ claimants are permitted to withdraw their respective shares, on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To
1.The Motor Accidents Claims Tribunal, Sub Court,
Sankagiri.

2.The Section Officer,
VR Section, High Court,
Madras - 104.

+2cc to Mr.M.B.Gopalan, Advocate SR.91280, 91281
+1cc to Mr.C.Kulanthaivel, Advocate SR.91196

CMA.Nos.59 & 60 of 2015

SS(CO)
CB(18/12/2020)