IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.623 and 802 of 2018
and C.M.P.No.5591 of 2018

C.M.A.No.623 of 2018

M/s.The New India Assurance Company Ltd.,
S.I.E.T. Building II floor
No.453, Anna salai
Teynampet, Chennai-600 018. .. Appellant

Vs.

1.S.Revathy
2.M.Hameed .. Respondents

C.M.A.No.802 of 2018

S.Revathy .. Appellant

Vs.

1.M.Hameed

2.M/s.The New India Assurance Company Ltd.,
S.I.E.T. Building II floor
No.453, Anna salai
Teynampet, Chennai-600 018.
Now at Door No.232, NSC Bose road
Bombay Mutual building
Chennai-1. .. Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.12.2017 made in M.C.O.P.No.1911 of 2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

In C.M.A.No.623 of 2018

For Appellant : Mr.J.Michael Visuvasam

For R1 : Ms.Ramya V.Rao

In C.M.A.No.802 of 2018

For Appellant : Ms.Ramya V.Rao
For R1 : No appearance
For R2 : Mr.J.Michael Visuvasam

COMMON JUDGMENT

C.M.A.No.623 of 2018 is filed by the Insurance Company against the award dated 13.12.2017 made in M.C.O.P.No.1911 of 2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

C.M.A.No.802 of 2018 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 13.12.2017 made in M.C.O.P.No.1911 of 2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P.No.1911 of 2008 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by her in the accident that took place on 12.06.2006. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.95,000/- as compensation to the claimant at the first instance and recover the same from the 1st respondent. Against the said award dated 13.12.2017 made in M.C.O.P.No.1911 of 2008, the second respondent/Insurance Company has come out with C.M.A.No.623 of 2018 challenging the liability as well as quantum of compensation. Not being satisfied with the amounts granted by the Tribunal, the claimant has come out with C.M.A.No.802 of 2018 seeking enhancement of compensation.

4.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal having held that the claimant travelled as a gratuitous passenger, ought to have exonerated the Insurance Company from its liability. The Tribunal erred in ordering pay and recovery, when the appellant is not liable to pay any compensation. The judgments relied on by the Tribunal relates to non-possession of driving license and it does not relate to the facts of the present case. The Tribunal ought to have followed the judgment of the Hon'ble Apex Court reported in 2003 ACJ 1 (New India Assurance Company Limited vs. Asha Rani) and exonerated the Insurance Company from its liability. The claimant has not pleaded in the claim petition that she travelled along with rice bags. In the evidence, she has deposed that she travelled along with rice bags in the auto, which is contrary to the averments made in the claim petition. The claimant travelled in the goods auto as a gratuitous passenger and hence the 2nd respondent is not liable to pay any compensation. The gratuitous passengers are not covered under the policy issued under Section 147(1) of the Motor Vehicles Act and prayed for setting aside the award of the Tribunal.

5.The learned counsel appearing for the claimant contended that even if the owner of the vehicle violated the policy and permit conditions, the Insurance Company cannot be exonerated from its liability. The Tribunal has rightly ordered pay and recovery. The claimant examined herself as P.W.1, examined P.W.2/Doctor and proved the nature of injuries. P.W.2/Doctor has assessed that the claimant suffered 45% disability. The Tribunal erroneously reduced the same to 4% and awarded meagre sum towards disability. The Tribunal ought to have awarded compensation for 45% disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Heard the learned counsel appearing for the claimant as well as 2nd respondent/Insurance Company and perused the materials available on record. The owner of the vehicle/1st respondent remained exparte before the Tribunal and notice to the 1st respondent is dispensed with.

7.From the materials available on record, it is seen that the claimant in the claim petition has stated that she along with others travelled in the mino door auto from Tiruvannamalai to Chennai. The driver of the minor door auto drove the same in a rash and negligent manner and caused the accident. The claimant suffered injuries in the accident. The claimant has not stated in the claim petition that she travelled along with the goods as owner of the goods or authorised representative of the owner. It is not the case of the claimant that she was a load woman and travelled in the minor door auto as a load woman. In the claim petition, she has stated that she was a tailor and was earning a sum of Rs.5,000/- per month. The 2nd respondent/Insurance Company has taken a specific stand that the claimant was a passenger in the commercial vehicle and proved the same by examining R.W.1 and filing Exs.R1 to R4. Section 147 (1) of the Motor Vehicles Act relates to insurance policy. As per Section 147(1) of the Motor Vehicles Act, the insurance policy issued by the Insurance Company covers the claim of third party against owner of the vehicle and the Insurance Company as an insurer is made liable to pay the compensation claimed by the third parties against owner of the vehicle. By amendment, the scope of Section 147(1) was enlarged to cover the risk of owner of goods or his authorised representative, who travel in the commercial goods vehicle along with other goods. Section 147(1) does not cover the liability of the passenger who travel in the goods vehicle as passenger. The issue whether the Insurance Company is liable for the claim made by the passenger in the goods vehicle who suffered bodily injury or legal representative of the deceased passenger is no longer resintegra. In number of judgments, this Court as well as the Hon'ble Apex Court have held that the Insurance Company is not liable to pay compensation to an unauthorised passenger or gratuitous passenger who travelled in a goods vehicle. The Tribunal and the Courts have no power to order pay and recovery also when there is no liability on the Insurance Company to pay any compensation. This issue was elaborately considered by the Division Bench of this Court in the following judgment reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others);

> "49.We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.
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> 50.In fact, we find that in none of the judgments referred to viz., National Insurance Co.Ltd. v. Swaran Singh and others, 2004 (1) TN MAC 104 (SC) :2004 (3) SCC 297; Mangla Ram V. Oriental Insurance Co. Ltd. 2018 (1) TN MAC 681 (SC) : 2018 (5) SCC 656 ; Rani & ors. v. National Insurance Co.Ltd. & ors., 2018 (2) TN MAC 278 (SC) : 2018 (9) Scale 310; and Manuara Khatun and

others v. Rajesh Kumar Singh and others, 2017 (1) TN MAC 289 (SC) : 2017 (4) SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized Passenger in the Goods Vehicle did arise for consideration. We are therefore of the considered opinion that the Judgment of the Two-Judge Bench in Shivaraj v. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the Compensation even in respect of an unauthorized Passenger, in a Goods Vehicle, in the light of categorical India Assurance Company v. Asha Rani and others; and National Insurance Co. Ltd. v. Baljit Kaur and others, referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the Compensation and giving it the liberty to recover the same from the Owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.”

The Hon'ble Apex Court considering various judgments regarding this issue allowed the appeal filed by the Insurance Company setting aside the portion of the award directing the Insurance Company to pay compensation. The ratio in the said judgment is squarely applicable to the facts of the present case. In view of the well settled judicial pronouncement, C.M.A.No.623 of 2018 filed by the 2nd respondent/Insurance Company is allowed and the portion of the award passed by the Tribunal directing the 2nd respondent/Insurance Company to pay compensation to the claimant at the first instance and recover the same from the 1st respondent/owner of the vehicle is set aside.

8.As far as C.M.A.No.802 of 2018 filed by the claimant with regard to quantum of compensation is concerned, from the materials available on record, it is seen that the claimant as P.W.1 deposed about the injuries and nature of treatment taken by her. She examined P.W.2/Doctor who deposed about the nature of injuries and treatment taken by the claimant and certified the disability of the claimant as 45%. The Tribunal reduced the same to 4% on the ground that P.W.2/Doctor is not the Doctor who treated the claimant and awarded only a sum of Rs.12,000/- (Rs.3,000/- X 4%) towards disability by awarding Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability to 4% is erroneous. The claimant has stated that she has taken treatment in the different hospitals from 12.06.2006 to 03.07.2006 and 11.04.2007 to 22.04.2007. Considering the nature of injuries and period of treatment taken by the claimant, she is entitled to compensation for 30% disability. The accident is of the year 2006. The claimant is entitled to a sum of Rs.2,000/- per percentage. The amount awarded by the Tribunal towards disability is modified to Rs.60,000/- (Rs.2,000/- X 30%) by awarding Rs.2,000/- per percentage. The claimant has produced Ex.P6/medical bills to the tune of Rs.73,542/-. The Tribunal has awarded only a sum of Rs.48,530/- towards medical expenses and has not given any reason for not awarding compensation towards medical expenses as claimed by the claimant. The claimant is entitled to Rs.73,542/- towards medical expenses as per Ex.P6. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are hereby 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.	Medical bills	48,530	73,542	Enhanced
2.	Disability	12,000	60,000	Enhanced
3.	Attendant charges	2,000	2,000	Confirmed
4.	Loss of income	12,000	12,000	Confirmed
5.	Pain and suffering	10,000	10,000	Confirmed
6.	Transportation	5,000	5,000	Confirmed
7.	Extra nourishment	5,000	5,000	Confirmed
	Total	94,530 rounded off to 95,000	1,67,542 rounded off to 1,67,600	Enhanced by Rs.72,600/-

9.In the result, C.M.A.No.623 of 2018 filed by the 2nd respondent/Insurance Company is allowed and the portion of the award passed by the Tribunal directing the 2nd respondent/Insurance Company to pay compensation to the claimant at the first instance and recover the same from the 1st respondent/owner of the vehicle is set aside. C.M.A.No.802 of 2018 filed by the claimant is partly allowed and the compensation of Rs.95,000/- awarded by the Tribunal is hereby enhanced to Rs.1,67,600/- together with interest at the rate of 9% per annum from the date of petition till the date of deposit. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is permitted to withdraw the entire amount deposited by them, if any. The 1st respondent/owner of the mini door auto is directed to deposit the entire award amount now determined by this Court along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.II Judge
Court of Small Causes
The Motor Accident Claims Tribunal
Chennai.

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

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.32047

+1cc to Mr.A.N.Viswanatha Rao, Advocate SR.No.32139

C.M.A.Nos.623 and 802 of 2018
and C.M.P.No.5591 of 2018

RGN(CO)
GMY(18/08/2021)