IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2019

CORAM:

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Civil Miscellaneous Appeal Nos.2214 & 2215 of 2003

Umamaheshwari (Minor)
Rep. by her father & natural guardian,
A.Natarajan ... Appellant/Petitioner in CMA No.2214/2003

M.Nagarajan ... Appellant/Petitioner in CMA No.2215/2003

Vs

1. P.Mangkhol Dhagouchal
2. United India Insurance Co. Ltd.,
   Third Party Claims Cell,
   No.38 Anna Salai, Chennai - 2 ... Respondents/Respondents in both CMAs

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set-aside the common decree and Judgment, dated 24.08.2000 made in M.C.O.P.Nos.1849 & 1848 of 1996 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

For Appellant in both CMAs : Mr. S.N.Narasimhulu
For Respondents in both CMAs: Mr. M.J.Vijayaraghavan, for R-2
Exparte - R-1

J U D G M E N T

These Appeals are preferred by the appellants / claimants against the award passed in M.C.O.P.Nos.1849 & 1848 of 1996 awarding sums of Rs.9,500/- and Rs.98,000/-, respectively, towards compensation, on account of the injuries sustained by them, in an accident.

2. The case in brief is as follows:-
On 04.09.1995, at about 06.15 hrs, at Santhome High Road, Chennai, one Uma Maheswari was sitting on the backside of Cycle of Mr.Nagarajan, who was riding the cycle and at that time, the first respondent's motorcycle bearing Registration No.TN09-D-2594 came with high speed on the backside of the cycle and hit them. Due to the said impact, both of them thrown out on the

road and sustained grievous injuries. The claimants / appellants filed claim petitions before the Tribunal as against the first respondent (owner of the motorcycle) and the second respondent (Insurer of the motorcycle).

3. On a consideration of the materials and evidence available on record, the Tribunal has awarded a total compensation at Rs.9,500/- (in MCOP No.1848 of 1996) and Rs.98,000/- (in MCOP No.1849 of 1996) payable by the owner of the motorcycle / R-1. Challenging the same as disproportionate to the injuries sustained by the claimants, these Civil Miscellaneous Appeals have been filed.

4. The learned counsel for the appellants / claimants submitted that the findings rendered by the Tribunal on the driving licence of the rider/owner of the motorcycle are against evidence and insurance policy. He further submitted that the quantum arrived at by the Tribunal on each and every heads is not based on the settled principles of law and weightage of evidence and hence they need substantial enhancement.

5. Per contra, the learned counsel for the second respondent / Insurance Company submitted that the driver/owner of the motorcycle was having temporary (LLR) licence and hence the Insurance Company is not liable to pay compensation to the claimants. He further submitted that the Tribunal based on the evidence and documents available on record has fastened the liability on the part of the first respondent herein, exonerating the second respondent herein, which does not require any interference at the hands of this Court.

6. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

7. At the outset, it has to be pointed out that the only reason to exonerate the Insurance Company from paying compensation was that the LLR alone was produced by the rider/owner of the motorcycle, but on the other hand, a perusal of the materials, more particularly, Ex.P-12-LLR Certificate of the first respondent herein and Ex.R-1-Investigation Report reveal that the rider / owner of the motorcycle, i.e., the first respondent herein is the holder of temporary licence of international origin.

8. It is not in dispute that the owner of the motorcycle rode his vehicle on the date of accident. The claimants were examined as P.Ws.1 and 2 and they have deposed about the involvement of the said vehicle in the accident and the accident had occurred only due to rash and negligent driving of the said

vehicle by its driver. There is no sufficient evidence by the Insurer to show the collusion between the claimants and the vehicle owner in respect of the accident. Hence, in such view of the matter, this Court is of the view that the Insurer / second respondent herein has to be directed to pay the award amount and recover the same from the owner. The view of this Court is also supported by the dictum laid down by this Court in the case of P.Marudhachalam and others v. K.Sridhar and others, 2015 (5) CTC 181 and also by the High Court of Delhi in the case of New India Assurance Co. Ltd. v. Manjit Singh and others, 2012 ACJ 2176.

9. So far as the quantum of compensation awarded by the Claims Tribunal (in respect of MCOP No.1848 of 1996, which was challenged in CMA No.2215 of 2003), is concerned, the Tribunal has quantified the total compensation at Rs.9,500/- under the heads of medical expenses, transportation expenses, extra nourishment and pain and sufferings at Rs.500/-, Rs.1,000/- and Rs.1,000/- and Rs.7,000/- respectively.

9.1. So far as the quantum of compensation awarded by the Claims Tribunal (in respect of MCOP No.1849 of 1996, which was challenged in CMA No.2214 of 2003) is concerned, the Tribunal has quantified the total compensation at Rs.98,000/- under the heads of Transport expenses, extra nourishment, medical expenses, future medical expenses and partial disablement at Rs.1,000/-, Rs.2,000/-, Rs.25,000/-, Rs.20,000/- and Rs.50,000/- respectively.

9.2. This Court is of the opinion that the said sums awarded under the above heads by the Tribunal are based on the settled principles of law and conventional methodologies being adopted by it in all the cases, which does not require any interference by this Court. In fact, the findings rendered on quantum by the Claims Tribunal for arriving at the compensation under each and every heads are based on evidence and documents available on record, which is nothing but just, in the opinion of this Court.

10. In view of the foregoing reasonings, the findings rendered by the Claims Tribunal on negligence is modified to the extent that the second respondent / Insurance company is exonerated from its liability, but is directed to pay the compensation awarded by the Tribunal at first instance to the claimants / appellants and recover the same from the owner/rider of the motorcycle (R-1 herein), apart from confirming the findings on quantum. These Civil Miscellaneous Appeals are partly allowed. No costs.

11. The compensation amounts, as arrived at by the Claims Tribunal, shall be deposited by the Insurance Company / R-2, (at first), along with interest at 7.5% per annum, from the date of petition, till the date of deposit, less the amount already

deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. The Insurance Company is not liable to pay any interest on the compensation amount, in respect of the default period, for which, condonation of delay has been ordered.

12. It is stated that the appellant in CMA No.2214 of 2003 has attained majority by now. In view of the said submission, the Tribunal shall transfer the compensation amount to the Savings Bank Account(s) of the claimants, through RTGS, within one week thereafter, on an application being taken out by the appellant in CMA No.2214 of 2003 before the Claims Tribunal.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

srk
To
1. Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

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

+4 CCS to Mr.S.N. Narasimhulu, Advocate sr 89162 & 59163.
+2 Ccs to Mr.M.J. Vijaya Raghavan, Advocate sr 58964 & 58965

C.M.A.Nos.2214 & 2215 of 2003

GJ(CO)
SP(04/12/2019)