



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1259 of 2017 and 1260 of 2017
and

C.M.P.Nos.6468, 6469 of 2017 and 5066, 5070 of 2019

C.M.A.No.1259 of 2017:

The United India Insurance Company Limited,
No.130, Branch Office,
MTH Road,
Lucky Tower, Ambattur Indl. Estate,
Chennai - 600 058. .. Appellant/2nd Respondent

Vs.

1.L.Chandra .. Respondents 1 to 4/
Petitioners
2.K.Sharmila
3.Minor.K.Gunashree
4.Minor.K.Harinath

(Minors R3 and R4 are represented by
their mother and next friend K.Sharmila)

5.P.Sekar ..5th Respondent/1st Respondent

C.M.A.No.1260 of 2017:

The United India Insurance Company Limited,
No.130, Branch Office,
MTH Road,
Lucky Tower, Ambattur Indl. Estate,
Chennai - 600 058. .. Appellant/2nd Respondent

Vs.

1.K.Sharmila ..1st Respondent / Petitioner
2.P.Sekar ..2nd Respondent/1st Respondent
3.

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the common judgment and decree dated 20.07.2015 made in M.C.O.P.Nos.1113 and 1114 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, to deal with M.C.O.P. cases, Chennai.



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(in both C.M.As.)

For Appellant	:	Mr.A.Dhiraviyanathan
For Respondents	:	No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the common award dated 20.07.2015 made in M.C.O.P.Nos.1113 and 1114 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, to deal with M.C.O.P. cases, Chennai.

2.Both the appeals are arising out of the common award and hence they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition, for the sake of convenience.

3.The appellant in both the appeals is the second respondent in M.C.O.P.Nos.1113 and 1114 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, to deal with M.C.O.P. cases, Chennai. The respondents 1 to 4 in C.M.A.No.1259 of 2017 and the first respondent in C.M.A.No.1260 of 2017 filed the above said claim petitions claiming a sum of Rs.20,00,000/- and Rs.1,00,000/- respectively as compensation for the death of one L.Kumaresan and for the injuries sustained by the first respondent in C.M.A.No.1260 of 2017 in the accident that took place on 23.08.2007.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver-cum-owner of the lorry, the first respondent and directed the second respondent to pay a sum of Rs.15,94,000/- and Rs.25,000/- respectively as compensation to the claimants in M.C.O.P.Nos.1113 and 1114 of 2008.

5.Against the common award dated 20.07.2015 made in M.C.O.P.Nos.1113 and 1114 of 2008 granting compensation to the claimant, the second respondent-Insurance Company has come out with the present appeals.

6.The learned counsel appearing for the second respondent-Insurance Company contended that the vehicle belonging to the first respondent was not insured with the second respondent at the time of accident. The insurance policy mentioned by the claimants in column No.16, does not relate to the period from 19.08.2007 to 18.08.2008. But it



relates to the period from 19.08.2006 to 18.08.2007. The accident occurred on 23.08.2007, after expiry of policy and there is no contract between the respondents on the date of accident. As per the investigation report, the owner-cum-driver was charge sheeted under Section 196 of Motor Vehicles Act, 1988, for driving uninsured vehicle. The Tribunal erred in awarding a sum of Rs.25,000/- as compensation for the simple injuries sustained by the claimant in M.C.O.P.No.1114 of 2008 and prayed for setting aside the common award passed by the Tribunal.

7.I have heard the learned counsel appearing for the second respondent-Insurance Company and perused the entire materials on record.

8.From the materials available on record, it is seen that the claimants have contended that the vehicle belonging to the first respondent was insured with the second respondent-Insurance Company at the time of accident. The claimants have given details of policy in column No.16 of the claim petition. The second respondent-Insurance Company did not specifically deny that said policy was not for the period when the accident was occurred. They have stated in paragraph No.5 of the counter filed before the Tribunal that claimants have to prove that vehicle of the first respondent was validly insured with the second respondent at the time of accident. The second respondent-Insurance Company has not verified whether the policy number mentioned in the claim petition relates to the period when the accident occurred when they filed the counter statement. It is pertinent to note that second respondent-Insurance Company has not let in any oral and documentary evidence to disprove the contention of the claimants with regard to existence of policy. The Tribunal considering the above materials and the fact that second respondent sought permission to file under Section 170 of Motor Vehicles Act, 1988, admitting that they are insurer of the vehicle, directed the second respondent-Insurance Company to pay compensation. The second respondent has filed C.M.P.Nos.5066 and 5070 of 2019 for permission to file two documents namely, charge sheet and insurance policy. The second respondent has not given valid reason for not filing these documents before the Tribunal. The reason given by the second respondent-Insurance Company is not valid and sufficient.

9.As far as compensation awarded in M.C.O.P.No.1113 of 2008 is concerned, the Tribunal has awarded a total compensation of Rs.15,94,000/-. The Tribunal has considered the avocation of the deceased as claimed by the claimants, fixed notional income of the deceased at Rs.6,500/- as per



the judgment of the Hon'ble Apex Court. The Tribunal has not granted any amount towards future prospects and the reasons given by the Tribunal for not granting any enhancement for future prospects is not correct. The Tribunal has awarded excess amounts for loss of consortium to the second claimant and for loss of love and affection for the first claimant and respondents 3 and 4. The Tribunal has not awarded any amounts for loss of estate but awarded excessive amounts for funeral expenses. In view of the fact that the Tribunal has not awarded any amounts towards future prospects and loss of estate, the excessive amounts awarded is not interfered with.

10.As far as quantum of compensation awarded in M.C.O.P.No.1114 of 2008 is concerned, the Tribunal considered the nature of injuries sustained by the claimant and awarded a sum of Rs.25,000/- as compensation, which is not excessive.

11.In the result, both the appeals are dismissed. The compensation awarded by the Tribunal at Rs.15,94,000/- and Rs.25,000/- are hereby confirmed. The second respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.Nos.1113 and 1114 of 2008 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, to deal with M.C.O.P. cases, Chennai. On such deposit, the claimants in M.C.O.P.No.1113 of 2008 are permitted to withdraw their respective share of the award amount, as per the ratio of apportionment fixed by the Tribunal and the claimant in M.C.O.P.No.1114 of 2008 is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. C.M.P.Nos.5066 and 5077 of 2019 are dismissed and C.M.P.Nos.6468 and 6469 of 2017 are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Subordinate Judge No.II,
(to deal with M.C.O.P. cases)
Motor Accidents Claims Tribunal,
Chennai.



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

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+lcc to Mr.A.Dhiraviyanathan , Advocate SR.No. 30906

C.M.A.Nos.1259 of 2017 and 1260 of 2017
and

C.M.P.Nos.6468, 6469 of 2017 and 5066, 5070 of 2019

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A.SK(12/11/2019)