IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.2648 of 2009
and
Cross.Ob.No.111 of 2014

C.M.A.No.2648 of 2009

United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai-2. ...Appellant/2nd respondent

Vs.

1.S.Vijai ...Respondents/Petitioner/1st Respondent

2.A.Marimuthu

Prayer in C.M.A.No.2648 of 2014: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.36 of 2005 dated 15.12.2008 by the Additional District Judge, Fast Track Court No.3, Motor Vehicle Accidents Claims Tribunal, Chennai.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mr.P.Chinnaraj for R1
: No appearance for R2

Cross.Ob.No.111 of 2014

S.Vijai ... petitioner/Cross objector

Vs.

1.United India Insurance Co.Ltd.,
38, Mount Road,
Chennai600 002. ...1st Respondent/1st Respondent

2.A.Marimuthu ...2nd Respondent/2nd Respondent

Prayer: Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, against the decree and Judgment dated 15.12.2008 passed in MCOP.OP.No.36 of 2005 on the file of the Motor Accident Claims Tribunal / Additional District Court (Fast

Track Court No. III), Chennai.

For Cross objectors : Mr.P.Chinnaraj
For Respondents : Mr.D.Bhaskaran for R1
No appearance for R2

J U D G M E N T

The United India Insurance Company Limited represented by its Managing Director, Chennai, the second respondent in MCOP.No.36 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District Court (Fast Track Court No. 3), Chennai has filed the present appeal questioning the quantum of compensation awarded by the Tribunal. The claimant in the said MCOP filed the Cross Objection. No.111 of 2014 seeking enhancement of compensation awarded by the Tribunal for the injuries sustained by him, in a road accident that took place on 12.08.2004.

2. The parties are referred to as per their ranking before the Tribunal and at appropriate places their ranks in the present Civil Miscellaneous Appeal would also be indicated.

3. The case of the claimant is that on 12.08.2004 at about 12.15 hour while the claimant was riding a Motor Cycle bearing Regn.No.TN-05-K-7472 from East to West in Stephens Road, infront of door No.3, New fancy stores, a Auto bearing Regn.No.TN-05-M-2101 driven in a rash and negligent manner came from the opposite direction and hit against the claimant. Due to the said incident, the claimant sustained grievous injuries. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the Auto bearing Regn.No.TN05M2101 and therefore, the owner of the said vehicle as well as their Insurance Company are liable to pay compensation to him.

4. The United India Insurance Company Limited contested the claim petition. The learned Motor Accidents Claims Tribunal / Additional District Judge (Fast Track Court No. 3), Chennai, after analysing the evidence on record, awarded a compensation of Rs.69,000/- together with interest at the rate of 9% per annum to the claimant.

5. The learned counsel appearing for the appellant / The United India Insurance Company Ltd., contended that the Tribunal had awarded a sum of Rs.69,000/- to the claimant even without considering the facts of the claimant.

6. The learned counsel appearing for the claimant / 1st respondent contended that the amount awarded by the Tribunal is

very meager and hence, prayed to enhance the same and dismiss the appeal.

7. It is seen that the P.W.2/doctor assessed 55% of disability. The same was reduced by the Tribunal and fixed as 50% and a sum of Rs.50,000/- towards "Disability" was awarded. After considering the medical bills and receipts a sum of Rs.7,000/- towards "Medical Expenses" is awarded. The Tribunal has awarded a sum of Rs.5,000/- towards "pain and sufferings" and a sum of Rs.5,000/- towards "nutrition" and a sum of Rs.2,000/- towards "Transportation" totally Rs.69,000/-.

8. In the decision in The Oriental Insurance Company Limited vs. C.S.Periyasamy reported in C.M.A.(MD) No.367 of 2009 (cited supra), it is found that the contention of the appellant is that the first respondent met with an accident and sustained multiple grievous injuries and fractures. The second respondent is the owner of the vehicle and the appellant questioned the fact that the vehicle met with an accident did not possess fitness certificate and therefore, the Insurance Company is liable to be exonerated and the liability is to be fixed on the owner of the vehicle. The Tribunal though considered the fact that there is no fitness certificate and the second respondent /owner of the vehicle failed to establish that the vehicle was in possession of valid fitness certificate, fixed the liability to the appellant/insurance company, which is questioned by the appellant in the present appeal.

9. Further, the learned counsel appearing for the appellant contented that the Cross Objection filed by the first respondent/claimant is not maintainable in vie of the Judgment of the Hon'ble Division Bench of this Court in Branch Manage, New India Assurance Co.Ltd., V. Salat Mary and others in C.M.A.No.185 of 1997 dated 04.02.2004, wherein the Hon'ble Division Bench of this Court held as under:

> "7. In 1993 ACJ 486 (united India Insurance Co.Ltd., V.Rajammmal), in an identical circumstances, namely, in an appeal filed by the Insurance Company, the respondents therein-claimants filed cross objection praying for higher compensation. The Division Bench, after referring the earlier decisions of this Court and other High Courts as well as the Supreme Court and in the light of the relevant provisions from the Motor Vehicles Act as well as Civil Procedure Code, held that,
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> "The Cross Objection filed by the claimants in an appeal filed by the Insurance Company,

questioning their liability only is not maintainable”

8. In 1999 ACJ 136 (United India Insurance Co.Ltd., V. Dulasi Ammal), which is a judgment rendered by one of us (P.Sathisivam.J.), similar question was considered. Here again, the Division bench decision referred to above (1993 ACJ 486) was considered. After referring Section 110D of the Motor Vehicles Act, 1939, Section 173 of the Motor Vehicle Act, 1988, Order 41, Rule 22 of the Code of Civil Procedure and after referring various decisions, it is held that,

“The cross objection filed by the claimants in an appeal exclusively filed by the Insurance Company questioning their liability alone is not maintainable.”

Both the above referred decisions of this Court are directly on the point.”

10. Hence, the cross objection is to be dismissed.

11. In respect of the liability of the appellant, this Court and the Hon'ble Apex Court settled the principle that the claimant is a third party and even if there is any violation of policy condition, in respect of the claim made by the third parties, the Insurance Company has to pay the award amount to the claimant at the first instance and thereafter, to recover the same from the owner of the vehicle.

12. On this aspect, in the judgment reported in (2004) 13 SCC 224 in the case of Oriental Insurance Co.Ltd., V.Nanjappan and others, the Hon'ble Apex Court made the following observation:

“8.Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount, which the insurer will pay to the claimants. The offending vehicle shall be attached, as a past of the security. If necessity arises the Executing Court shall, take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

13. In view of the settled principles laid down by this Court and the Hon'ble Supreme Court of India, this Court is inclined to consider the principle of pay and recovery.

14. In the case on hand, the Tribunal while awarding Rs.69,000/- together with interest at the rate of 9% interest per annum directed the appellant to pay the award amount and thereafter, recover from the owner of the vehicle.

15. In the result,

(i) The Civil Miscellaneous Appeal is allowed. The Cross Objection is dismissed. No costs.

(ii) The quantum of compensation awarded by the Tribunal Rs.69,000/- is confirmed.

(iii) The 1st respondent / claimant is directed to pay the Court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the required Court fee.

(iv) The appellant, Insurance Company is directed to deposit the entire compensation awarded by this court i.e., Rs.69,000/- (less the amount already deposited) together with interest at the rate of 9% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.36 of 2005 on the file of the Motor Accidents Claims Tribunal / Additional District Court (Fast Track Court No. 3), Chennai, within a period of four weeks from the date of receipt of a copy of this order and recover the same from the owner of the vehicle.

(v) On such deposit being made, the first respondent / claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn
To
1.The Motor Accident Claims Tribunal
Additional District Judge,
Fast Track Court No. 3,
Chennai.

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

+1 cc to M/s.D.Bhaskaran, Advocate Sr.No. 11857

CMA.No.2648 of 2009
and
Cross.Ob.No.111 of 2014

MR(CO)
RMP(04/03/2021)