

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3140 of 2009 &
C.M.A.No.417 of 2010 &
M.P.No.1 of 2009

CMA.No.3140 of 2009

United India Insurance Co., Ltd.,
Branch Office - 1,
Junction Main Road,
Salem - 5.

...Appellant/2nd Respondent

vs.

1.Chandran

...1st Respondent/Petitioner

2.M.Palanisamy

...2nd Respondent/1st Respondent

(R2 set exparte before MACT. Notice may be given up)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, challenging the award and decree dated 20.07.2009 made in MCOP.No.354 of 2005 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.1, Salem).

For Appellant : Mrs.I.Malar

For Respondent 1: Mr.K.Kuppusamy

CMA.No.417 of 2010

Chandran

... Appellant/Petitioner

vs.

1.M.Palanisamy

2.United India Insurance Co. Ltd.,

Branch Office, No.1, Junction Main Road.
Salem - 5

... Respondents/Respondents

(1st respondent set exparte)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, challenging the award passed in MCOP.No.354 of 2005 dated 20.07.2009 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.1, Salem).

For Appellant : Mr.K.Kuppusamy
For Respondent 2 : Mrs.I.Malar
R1 set exparte

COMMON JUDGMENT

(These Appeals have been taken up for hearing through Video Conferencing)

These two appeals have been filed, one by the insurance company and the other by the claimant challenging the award passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.1, Salem) in MCOP.No.354 of 2005.

2. Both the appeals arise out of the same award and hence, it is disposed of by this common judgment.

3. CMA.No.3154 of 2009 has been filed by the insurance company challenging the findings of the Tribunal that the negligence is on the part of the driver of the insured vehicle and they have also challenged the quantum of compensation awarded by the Tribunal under the impugned award. Being unsatisfied with the quantum of compensation awarded by the Tribunal, CMA.No.417 of 2010 has been filed by the claimant seeking enhancement of compensation.

4. Heard Mrs.I.Malar learned counsel for the Insurance Company and Mr.K.Kuppusamy, learned counsel for the claimant.

5. Learned counsel for the Insurance company has brought to the notice of this Court a Judgment of the learned Single Judge of this Court dated 05.10.2015 passed in CMA.No.1711 of 2008 involving another claim arising out of the same accident. In the said appeal, CMA.No.1711 of 2008, the same insurance company the Appellant herein had raised the same grounds as raised in this appeal with regard to their liability alleging that the accident happened only because three persons were travelling in the motor cycle which caused the imbalance and only due to the rash and negligent driving by the rider of the motor cycle, the said motor cycle collided with the bus which is insured with the Insurance Company. The learned Single Judge of this Court by its Judgment dated 05.10.2015 in the connected appeal CMA.No.1711 of 2008 has considered the contention of the Appellant and has rejected the same by observing that the Insurance company has

not let in any oral or documentary evidence by examining either the conductor or the driver of the bus to prove that only due to the fact that three persons travelling in the motor cycle, the accident had happened.

6. This Court has also perused and examined the impugned award. As rightly observed by the learned Single Judge of this Court in the connected Appeal No.1711 of 2008, no evidence has been placed before the Tribunal by the insurance company in support of their contention that only due to the fault of the rider of the two wheeler, the accident had happened.

7. The grounds raised in CMA.No.3140 of 2009 are identical to the grounds raised in CMA.No.1711 of 2008 involving the same accident which was dismissed by another learned Single Judge of this Court by its judgment dated 05.10.2015.

8. Insofar as quantum of compensation awarded by the Tribunal is concerned, considering the nature of injuries suffered by the claimant, this court is of the considered view that the amount awarded by the Tribunal is low. Though the Tribunal has adequately awarded compensation under various other heads, has failed to award any compensation towards pain and suffering.

9. Insofar as the appeal filed by the claimant in CMA.No.417 of 2010 is concerned, the claimant sustained head injuries, as seen from the deposition of PW2, a doctor who examined him.

10. Before the Tribunal, the claimant has filed eight documents which were marked as Ex.A1 to Ex.A8 and two witnesses were examined namely the claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Insurance Company, neither any document was filed nor any witness examined.

11. As seen from the evidence available on record, the Doctor has assessed the disability of the claimant at 30%. The nature of injuries sustained by the claimant has also not been disputed by the insurance company. Admittedly, the claimant was hospitalised for a period of five days as seen from the discharge summary issued by the hospital which was marked as Ex.A2. Scans and X-rays were also taken by the claimant as seen from the exhibits marked before the Tribunal and it reveals that head injuries were sustained by the claimant. Due to the head injuries, he would have certainly suffered pain and suffering during the course of his treatment. However, the Tribunal under the impugned award has not granted any compensation towards pain and suffering to the claimant.

12. With regard to the quantum of compensation awarded by

the Tribunal under various heads namely medical bills, disability compensation and scan bills totally amounting to Rs.84,450/- is concerned, the same is in order and does not call for any interference. However, the only additional compensation that will have to be granted to the claimant is compensation towards pain and suffering. The Tribunal ought to have considered the nature of injuries especially the head injury suffered by the claimant and ought to have awarded some amount of compensation towards pain and suffering. In the considered view of this Court, a sum of Rs.15,000/- will be adequate and a just compensation to the claimant towards pain and suffering during the period of his treatment.

13. Accordingly, the impugned award of the Tribunal is modified by this Court in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
As per discharge summary	10,000/-	10,000/-
As per medical bills	11,950/-	11,950/-
As per disability certificate	60,000/-	60,000/-
As per scan bills	2,500/-	2,500/-
Pain and suffering	Nil	15,000/-
Total	84,450/-	99,450/-

Conclusion:

14. In the result, CMA.No.3140 of 2009 filed by the Insurance company is dismissed and CMA.No.417 of 2010 filed by the claimant is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.84,450/- to Rs.99,450/-. The insurance company who is the Appellant in CMA.No.3140 of 2009 is directed to deposit the modified award amount after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs to the credit of MCOP.No.354 of 2005 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant who is the Appellant in CMA.No.417 of 2010 is permitted to withdraw the amount along with accrued interest lying to the credit of

MCOP.No.354 of 2005 by filing an appropriate application. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

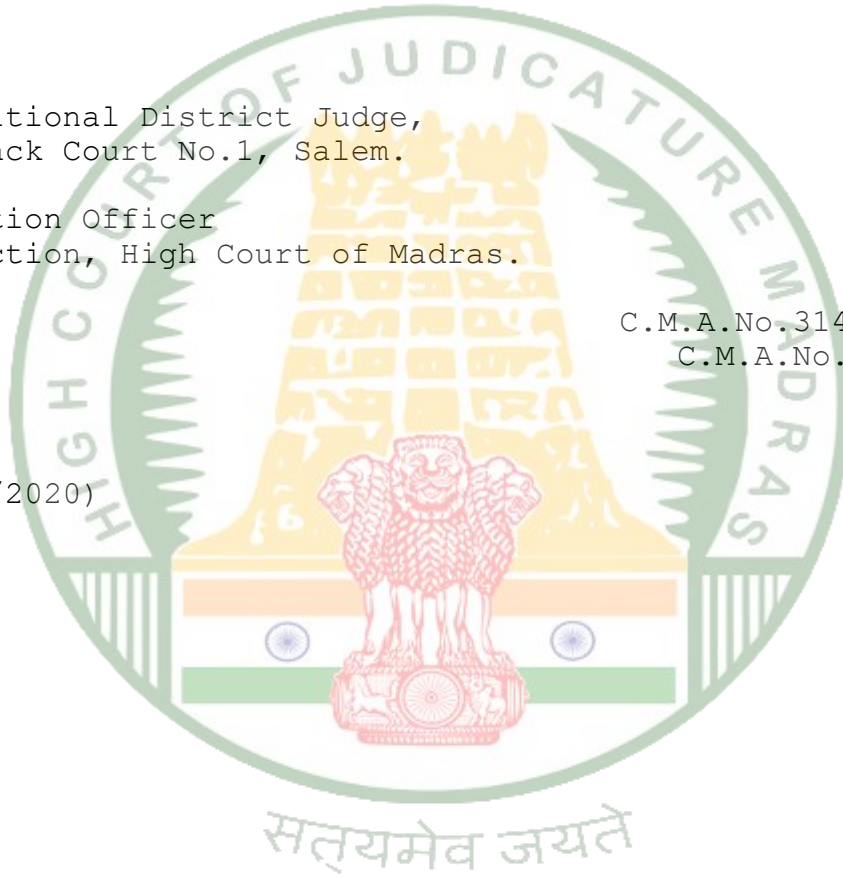
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To

- 1.The Additional District Judge,
Fast Track Court No.1, Salem.
- 2.The Section Officer
V.R.Section, High Court of Madras.

C.M.A.No.3140 of 2009 &
C.M.A.No.417 of 2010

MG (CO)
GMY (23/11/2020)



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