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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.11.2020

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.218 of 2015
& C.M.A.No.356 of 2015

& Cross Objection No.60 of 2009

C.M.A.No.218 of 2015

The Divisional Manager,
M/s.United India Insurance,
Neyveli.

... Appellant/2nd respondent

/versus/

1. Thiru.Shankar,
S/o.Ponnusamy,
No.38, North Street,
Kanchiramkulam, Poyyanapadi Post,
Titagudi Taluk.

... 1st Respondent/Claimant

2. Thiru.Sadayakumar,
S/o.Kadirvel,
No.97, Madurainaicken Street,
Chinnamettukuppam,
Chennai - 600 095.

... 2nd Respondent/1st Respondent

Cross Objection No.60 of 2019

Shankar,
S/o.Kadirvel,
No.38, North Street,
Kanchiramkulam, Poyyanapadi Post,
Titagudi Taluk

... Cross Appellant

/versus/

1. The Divisional Manager,
United India Insurance Co.Ltd.,
Neyveli.



2. Thiru.Sadayakumar,
S/o.Kadirvel,
No.97, Madurai Naicken Street, 1st Street,
Chinnamettukuppam,
Chennai - 95.

... Respondents

C.M.A.No.356 of 2015

The Divisional Manager,
M/s.United India Insurance,
Neyveli.

... Appellant/Respondent-II

/versus/

1. Tmt.Sathiya,
W/o.Shankar,
No.38, North Street,
Kanchiramkulam,
Poyyanapadi Post,
Titagudi Taluk.

... Respondent-I/Claimant

2. Thiru.Sadayakumar,
S/o.Kadirvel,
No.97, Madurai Naicken Street, 1st Street,
Chinnamettukuppam,
Chennai - 95.

... Respondent-II/Respondent-I

Prayer in C.M.A.No.218 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against judgment and decree passed in M.C.O.P.No.144 of 2012 on 25.02.2014 on the file of the Learned Motor Accident Claims Tribunal (III Additional District and Sessions Judge) of Cuddalore at Vridhachalam District.

Prayer in C.M.A.No.356 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against judgment and decree passed in M.C.O.P.No.145 of 2012 on 25.02.2014 on the file of the Learned Motor Accident Claims Tribunal (III Additional District and Sessions Judge) of Cuddalore at Vridhachalam District.

Prayer in Cross Objection No.60 of 2019: Cross Objection is filed under Order 41 Rule 22 of C.P.C., against the award dated 25.02.2014 and made in M.C.O.P.No.144 of 2012 on the file of the Motor Accident Claims Tribunal (III Additional District and Sessions Judge) of Cuddalore at Vridhachalam District.



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For Appellant
in C.M.A.Nos.218 & 356 of 2015

: Mr.J.Chandran

For R1
in C.M.A.Nos.218 & 356 of 2015

: Ms.A.Subadra,
for Ms.Malar

For R2
in C.M.A.Nos.218 & 356 of 2015

: Not ready notice

Cross Appellant

: Ms.A.Subadra,
for Ms.Malar.

COMMON JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellants and Learned Counsel for the respondents.

2. These two appeals arising out of the award passed by the Motor Accident Claims Tribunal, awarding a compensation of Rs.4,00,800/- for the petitioner in M.C.O.P.No.144 of 2012 and Rs.18,000/- for the petitioner in M.C.O.P.No.145 of 2012.

3. The petitioners are Husband and wife while travelling in the two wheeler they were hit by the 1st respondent who rash and negligently drove her Hero Honda Splendor. The claimant in M.C.O.P.No.144 of 2012 sustained following injuries. (i). Right Frontal Acute Subdural Haematoma. (ii). Frontal Sinus Fracture. (iii). Right Tibial Condylar Fracture. (iv). Mandibular Fracture. He being a fruit vendor, the injury has caused impairment in his earning capacity and therefore, a claim of Rs.20,00,000/- sought as compensation.

4. The claimant in M.C.O.P.No.144 of 2012, who sustained Laceration of 3x2cm on the right tone head and suffering Low back ache, claiming that the claimant/Sathiya she is doing business in milk vendor, the accident injuries had caused loss of income sought compensation of Rs.10,00,000/-

5. The Tribunal, on considering the material evidence has awarded a sum of Rs.4,00,800/- for the claimant in



M.C.O.P.No.144 of 2012 under the following heads:-

Sl.No s.	Compensation under various heads	Award passed by the Tribunal
1.	Loss of Future Income Rs.5000 x 12 x 16 x 23%	Rs.2,20,800/-
2.	Loss of Income for 4 months	Rs. 20,000/-
3.	Transportation	Rs. 15,000/-
4.	Extra Nourishment	Rs. 15,000/-
5.	Cost of attender chargers	Rs. 10,000/-
6.	Medical expenses as per Ex.P.7	Rs. 80,000/-
7.	Pain and Sufferings	Rs. 40,000/-
	Total	Rs.4,00,800/-

6. For the claimant in M.C.O.P.No.145 of 2012, Sathiya, a sum of Rs.18,000/- was awarded as consolidated compensation for the injury and other non-conventional heads.

7. The Insurance Company has preferred the appeals on specific ground that in spite of notice to the driver of the two wheeler, who is the 1st respondent, has not furnished his driving license since, he had no valid driving license, the Insurance company cannot held liable for the violation of policy condition by the owner-cum-driver of the vehicle. Further, would submit that as far as compensation awarded by the Tribunal to the claimant in M.C.O.P.No.144 of 2012, applying multiplier is not sustainable since the injury is not a scheduled injury and there is no evidence to show that the claimant had suffered disability in his earning capacity.

8. Per contra, the claimants have filed Cross objection in both the cases and would contend that the Tribunal has not adequately compensated them in the light of the injury sustained.

9. After hearing the Learned Counsels for the appellants and the Learned Counsel for the respondents and on perusing the records, this Court finds that the driver of the offending vehicle, who is the claimant in M.C.O.P.No.144 of 2012 had not produced his Driving License in spite of notice caused to him for production of Driving License. The Motor Inspector report marked as Ex.P.2 also reveals that he had no valid driving license. Therefore, it is a clear case of policy violation.

10. In such case, the Courts have held that the



Insurance Company have right to recover the compensation amount after paying the compensation to the claimant following the principle "Pay and Recover". In spite of proving the violation of policy condition by the insured, the Tribunal has erroneously fastened the liability on the Insurance Company contrary to facts and law laid down by the Constitutional Bench in National Insurance Company Vs. Swaran Singh reported in (2004 (1) ACJ 1). This Court therefore holds that the Insurance Company is entitled to recover the compensation amount after paying the claimants.

11. Regarding the quantum of compensation, the Tribunal, after considering the nature of injury sustained by the claimant (Shankar) in M.C.O.P.No.144 of 2012, who is the vendor in fruits and vegetables, had opined that the fracture sustained by him will have impairment in his earning capacity and therefore, has adopted the multiplier. The Doctor, who has examined him, has assessed 40% partial permanent disability for the head and jaw fracture and 30% for the fracture on his right leg. Since the fracture has caused facial difficulty and muscle power reduction, the Tribunal has thought fit that it will have impairment in his earning capacity. This Court confirms the said view in the absence of contra evidence. Therefore, finds that there is no reason to modify the award passed by the Tribunal either by reducing or increasing the same.

12. Similarly, the claimant in M.C.O.P.No.145 of 2012 Sathiya had sustained only lacerated injury, for which, the tribunal has awarded a sum of Rs.18,000/- which is fair and adequate, requires no modification.

13. Accordingly, the Civil Miscellaneous Petitions are dismissed and Cross Objection is also dismissed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm



To:

1.The Motor Accident Claims Tribunal
(III Additional District and Sessions Judge),
Vridhachalam, Cuddalore District.

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

+1cc to M/s.M.Malar , Advocate, S.R.No.36128

+1cc to Mr.J.Chandran, Advocate, S.R.No.36011

C.M.A.No.218 of 2015
& C.M.A.No.356 of 2015
& Cross Objection No.60 of 2009

LN(CO)
SU(13/09/2021)