

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2250 & 2251 of 2013

1.The Divisional Manager,
United India Insurance Co.Ltd.,
12003-A, MM, Reddy Complex,
Old Bangalore Road,
Hosur - 635 109.

2.The Branch Manager,
United India Insurance Co.Ltd.,
RPR.Complex, Bye Pass Road,
Near Govt.Hospital,
Dharmapuri - 636 701.

...Appellant/ Respondents 2 & 4
in both CMAs

Vs.

1.Shiva @ Sivakumar

... 1st Respondent/ Petitioner
in CMA.No.2250/13

2.G.Sirajudeen
Srinivas (died)

3.Nagaveni

4.Minor.Yokesh

5.Minor.Dharshan
(Minors are Rep.by Next Friend Guardian and
Mother Nagaveni)

...Respondents in C.M.A.No.2250/2013

1.Karthick @ Karthick Vadivel

...1st in CMA.No.2251/13

2.G.Sirajudeen
Srinivas (died)

3.Nagaveni

4.Minor.Yokesh

5.Minor.Dharshan
(Minors are Rep.by Next Friend Guardian and
Mother Nagaveni)

...Respondents 2 to 5/1, 5 to 7 Respondents
in C.M.A.No.2251/2013

Common Prayer: Civil Miscellaneous Petitions filed under Section 173 of Motor Vehicle Act, 1988 against the judgement and decree dated 11.06.2012 made in M.C.O.P.Nos.79 & 80/2007 on the file of the MACT (Sub-Court) at Hosur.

For Appellants : Ms.I.Malar
(in both CMAs)

For Respondents : Mr.Mukund R.Pandiyan
(for R.1)
R.2 to R.5 - Not ready in notice
(in both CMAs)

COMMON JUDGEMENT

These appeals have been filed by the Insurance company challenging the common Award dated 11.06.2012, passed by the Motor Accident Claims Tribunal, (Sub-Court, Hosur) in M.C.O.P.Nos.79 & 80 of 2007.

2.The Insurance Company has filed these appeals on the following grounds :

a) The Motor Accident Claims Tribunal has committed error in awarding compensation to the Claimant in the absence of any documentary evidence to show that the accident occurred due to the negligent riding of the Bike bearing Registration No.TN.24 Z 2871 by its rider. In any event, the rider of the Bike was not holding driving license at the time of accident.

b)The Tribunal has committed error that the Police Authority has enquired and closed the case against the rider of the 2nd Respondent herein as "mistake of fact". The complaint was lodged by the injured father after the lapse of 19 days i.e., on 10.03.2007 through post and not in person. The Claimant was discharged from the Hospital on 02.03.2007.

c)The compensation awarded by the Tribunal is excessive.

3.The first respondent in C.M.A.Nos.2250 & 2251 of 2013 preferred separate claims before the Motor Accident Claims Tribunal in M.C.O.P.Nos.79 & 80 of 2007 respectively, seeking compensation for the injuries sustained by them as a result of an accident caused by a vehicle insured with the Appellants. The Motor Accident Claims Tribunal under the impugned Common Award granted pay and recovery rights to the Appellant insurance company and also awarded a compensation of Rs.1,95,000/- to the first respondent in C.M.A.No.2250 of 2013 together with interest and cost and also awarded a compensation of Rs.1,33,950/- to the first respondent in C.M.A.No.2251 of 2013 together with interest and cost as detailed hereunder:

In CMA.No.2250 of 2013

Disability	-	Rs.1,00,000/-
Pain & Suffering	-	Rs. 50,000/-
Medical Expenses	-	Rs. 40,000/-
Nutrition	-	Rs. 5,000/-

Total	-	Rs.1,95,000/-

In CMA.No.2251 of 2013

Disability	-	Rs.80,000/-
Pain & Suffering	-	Rs.40,000/-
Medical Expenses	-	Rs. 8,950/-
Nutrition	-	Rs. 5,000/-

Total		Rs.1,33,950/-

4. Aggrieved by the respective Awards in M.C.O.P. Nos.79 & 80 of 2007, these appeals have been filed by the Insurance Company questioning its liability as well as challenging the quantum of compensation awarded to the respective first respondents under the impugned Common Award.

5. Before the Tribunal, the appellant / Insurance Company had contended that the rider of the motorcycle, who is the first respondent in C.M.A.No.2250 of 2013 was under the influence of alcohol and the said motorcycle was also carrying excess persons i.e. three persons, at the time of the accident. It was also their contention that the rider of the motorcycle was not possessing a driving license.

6. Before the Tribunal, the claimants namely the respective first respondents in C.M.A.Nos.2250 and 2251 of 2013 have filed documents which were marked as exhibits. The F.I.R, Ex.P1 was registered only against the driver of the insured vehicle bearing Registration No.TN.24 Z 2871 and not against the vehicle bearing Registration TN24 X 4281 in which the first respondent in C.M.A.No.2250 of 2013 was the rider. Even though, the said F.I.R. (Ex.P1) was closed as seen from the final report Ex.R1, due to mistake of fact, no evidence has been adduced by the appellant / Insurance Company before the Tribunal to substantiate their contention that the rider of the motorcycle bearing Registration TN 24 X 4281 was under the influence of alcohol or the said vehicle was carrying excess persons at the time of the accident.

7. A consistent stand has been taken by the first respondent as well as the other claimants involved in the same accident, that the cause of the accident was only the driver of the vehicle bearing Registration TN24 Z 2871 insured with the appellant as seen from the evidence available on record. Any

adjudication of claim by the Motor Accident Claims Tribunal is based on preponderance of probabilities. In the case on hand, the accident has not been disputed and the involvement of the vehicle insured with the appellant has also not been disputed. This being the case, the Tribunal has rightly mulcted the liability on the appellant/Insurance Company. If the rider of the motorcycle bearing Registration TN24 X 4281 was under the influence of alcohol, the appellant/Insurance Company ought to have produced the Breath Analyzer Report of the rider of the motorcycle bearing Registration TN24 X 4281. However, as seen from the evidence available on record, they have miserably failed to do so. There is also no evidence placed by the appellant/Insurance Company before the Tribunal to substantiate their claim that the motorcycle bearing Registration TN 24 X 4281 was carrying excess persons at the time of accident.

8. For the foregoing reasons, this Court is of the considered view that the Tribunal has rightly held that the appellant/Insurance Company is liable to compensate the claim of the respective first respondents in these appeals.

9. With regard to the second contention raised by the appellants insofar as the quantum of compensation awarded by the Tribunal is concerned, it does not deserve any merit for the following reasons:

The Tribunal has awarded a compensation of Rs.1,95,000/- to the first respondent in C.M.A.No.2550 of 2013 under the following heads:

Disability	-	Rs.1,00,000/-
Pain & Suffering	-	Rs. 50,000/-
Medical Expenses	-	Rs. 40,000/-
Nutrition	-	Rs. 5,000/-

Total	-	Rs.1,95,000/-

10. The Tribunal has awarded a compensation of Rs.1,33,950/- to the first respondent in C.M.A.No.2251 of 2013 as detailed hereunder;

Disability	-	Rs.80,000/-
Pain & Suffering	-	Rs.40,000/-
Medical Expenses	-	Rs. 8,950/-
Nutrition	-	Rs. 5,000/-

Total		Rs.1,33,950/-

11. The accident happened in the year 2007. The age and avocation of the respective first respondents have also not been disputed by the appellant/Insurance Company before the Tribunal as seen from the evidence available on record. After giving due consideration to the age, avocation and nature of injuries sustained by the respective first respondents supported by documentary evidence placed before the Tribunal by way of disability certificate and discharge summaries, there is no scope for interference by this Court as the compensation awarded by the Tribunal to the respective first respondents is a just

compensation.

12.The Tribunal has rightly awarded pay and recovery rights to the Appellants in view of the fact that the insured motorcycle was carrying excess persons at the time of the accident.

13.In the result, there is no merit in these appeals and they are dismissed. The Appellants are directed to deposit the entire amount awarded by the Tribunal, after deducting the amount already deposited if any, together with interest at the rate of 7.5% from the date of the claim till the date of realization to the credit of M.C.O.P.Nos.79 & 80 of 2007, on the file of the Motor Accidents Claims Tribunal (Sub-Court), Hosur, within a period of four weeks from the date of receipt of a copy of this Judgment and recover the same from the owner of the vehicle who is the second respondent in both the Appeals. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the bank account of the respective first respondents/claimants, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

pns

To

1.Motor Accident Claims Tribunal,
(Sub-Court), Hosur.

Copy to:

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

C.M.A.No.2250 & 2251 of 2013

A.SK(21.04.2021)