IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.942 & 2653 of 2015
M.P.No.1 of 2015

Duraisamy@ Ashokan ..Appellant/Petitioner in C.M.A.No.942 of 2015

M/s.United India Insurance Company Limited.,
The Branch Office,
D.No.5-B/11, S.B.I.Upstairs,
Salem Road, Rasipuram-637 408. ...Appellant/2nd Respondent in C.M.A.No.2653 of 2015

Vs.

1.Selvaraj ...R1/Respondent in C.M.A.No.942 of 2015

2. The United India Insurance Company Limited,
Branch Office,
No.5-B/11, SBI Upstairs,
Salem Road, Rasipuram,
Namakkal District. ... R2/Respondent in C.M.A.No.942 of 2015

3.Duraisamy@ Ashokan ...R1/Petitioner in C.M.A.No.2653 of 2015

4.K.Selvaraj ...R2/1st Respondent in C.M.A.No.2653 of 2015

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 31.08.2012 made in M.C.O.P.No.910 of 2011, on the file of the Motor Vehicle Accidents Claims Tribunal, Additional District Court, Namakkal.

For Petitioner in C.M.A.No.942 of 2015 : Mr.Ma.P.Thangavel

For Respondents in C.M.A.No.942 of 2015 : R1-Dispense with
M/s.I.Malar for R2

For Petitioner in C.M.A.No.2653 of 2015 : M/s.C.Harini for M/s.M.B.Gopalan

For Respondents : Mr.Ma.P.Thangavel for R1
in C.M.A.No.2653/2015 R2-Ex-parte

J U D G M E N T

The United India Insurance Company Limited filed C.M.A.No.2653 of 2015, challenging the award dated 31.08.2012 mainly on the ground that the vehicle, which met with an accident, did not possess the fitness certificate on the date of the accident. The fitness certificate expired on 29.06.2010 and the accident occurred on 14.06.2011. Therefore, the Insurance Company is not liable.

2. The learned counsel appearing for the appellant mainly contended that on account of the fact that the fitness certificate expired, and therefore, the vehicle met with an accident cannot be construed as fit vehicle, Insurance Company is not liable to pay compensation. However, this Court is of the considered opinion that injured claimant is a third party. On account of technical mistake committed by the owner of the vehicle, a third party injured cannot be made to suffer. This apart, the Tribunal has considered the nature of the injury and awarded compensation. However, the learned counsel for the appellant contended that even pay and recovery has not been ordered despite the fact that there is a clear violation of the policy condition. Even in case of such violation of policy condition, if the claimant is a third party, then the Tribunal ought to have granted pay and recovery enabling the Insurance Company to recover the compensation from the owner of the vehicle. Thus, this Court is of the considered opinion that the present case is a fit case to order the pay and recovery. However, the claimant, who is a third party, is entitled to get compensation. Accordingly, the pay and recovery is to be ordered, as far as the appeal filed by the United India Insurance Company Limited is concerned.

3. The claimant filed C.M.A.No.942 of 2015 seeking enhancement of compensation.

4. Undoubtedly, the nature of injury sustained by the claimant is grievous, more so, head injury. The Doctor assessed the disability as 38% and the Tribunal has also taken the disability as 38% and calculated the loss of income as 38X1000= Rs.38,000/-. This Court is of the considered opinion that the claimant was working as a driver, during the relevant point of time and fixation of monthly income as Rs.6000/- itself is inadequate and further, the compensation of Rs.1000/- per percentage is also inadequate. The accident occurred, during the year 2011 and therefore, the salary of the driver should atleast

be fixed at Rs.7,500/- and appropriate compensation would be Rs.3,000/- per percentage. Accordingly, the loss of income is to be enhanced as Rs.7500 x 3= Rs.22,500/-. As far as the disability is concerned, it is to be enhanced as 38 x 3000= Rs.1,14,000/-. In respect of other heads, this Court is not inclined to interfere with. Accordingly, the appellant in C.M.A.No.942 of 2015 is entitled for the enhanced compensation of Rs.3,67,500/-. Thus, the United India Insurance Company Limited is directed to deposit the compensation now enhanced along with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the claimants are entitled to withdraw the same by filing an appropriate application and the payments are to be made through RTGS.

5. The United India Insurance Company is permitted to file an execution petition to recover the entire compensation with accrued interest from the owner of the vehicle by following the procedures contemplated. Accordingly, the judgment and decree dated 31.08.2012 in M.C.O.P.No.910 of 2011 is set aside and C.M.A.No.942 of 2015 and C.M.A.No.2653 of 2015 are allowed. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssb
To

The Motor Vehicle Accidents Claims Tribunal,
Additional District Court, Namakkal.

+1 CC to M/s. M.B. Gopalan Advocate sr 23778
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 22866
+1 CC to Mr.T. Ravi Chandran, and I. Malar, Advocate sr 22475.

C.M.A.Nos.942 & 2653 of 2015

RLD(CO)
SP(09/09/2020)