IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2704 of 2014
and M.P.No.1 of 2014

M/s.United India Insurance Co. Ltd.,
Address of its issuing office:
1343, Sathy Main Road,
Bharathi Complex,
Ganapathy,
Coimbatore - 641 006.
Having its Regional Office at,
3rd Floor,
Coimbatore - 641 018. ...Appellant/Respondent III

vs.

1.Thiru.G.Duraisamy ..Respondent I/Petitioner
2.Thiru.M.Karthik .. Respondent II/ Respondent I
3.Thiru.S.Vijayaraja. .. Respondents III/ Respondent II

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree passed in M.C.O.P.No.1000 of 2012 on 05.08.2013 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Coimbatore.

For Appellant : Mr.V.Murali
for M/s.J.Chandran

For Respondents: Mr.Lokesh for R1
for Mr.Ma.P.Thangavel
R2 & R3 - Insufficient address

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 05.08.2013 passed by the Motor Accidents Claims Tribunal, (Special Subordinate Judge) at Coimbatore in MCOP No.1000 of 2012.

2. The first respondent /claimant sustained injuries on 20.03.2012 as a result of an accident caused by a vehicle, owned by the second respondent and insured with the appellant / Insurance Company. He preferred a claim before the Motor Accidents Claims Tribunal, (Special Subordinate Judge) at Coimbatore in MCOP No.1000 of 2012 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal, (Special Subordinate Judge) at Coimbatore under the impugned award directed the appellant / Insurance Company to pay the first respondent / claimant a compensation of Rs.2,27,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Compensation for partial permanent disability	56000
Loss of income (6 x 5000)	30000
Medical expenses	85000
Pain and suffering	20000
Extra nourishment	10000
Transport	1000
Loss of amenities and enjoyment of life	25000
Total	227000

4. Heard Mr.V.Murali, learned counsel for the appellant / Insurance Company and Mr.Lokesh, learned counsel for the first respondent / claimant. The second and third respondents remained ex-parte both before the Tribunal as well as before this Court and notice to R2 and R3 are dispensed with.

5. The appellant / Insurance Company has challenged the impugned award on the following grounds :-

a. They are not liable to compensate the claim, since the fitness certificate for the insured vehicle lapsed on 08.08.2011, much prior to the date of the accident.

b. The quantum of compensation awarded by the Tribunal is excessive.

6. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

7. Insofar as the first contention raised by the appellant / Insurance Company is concerned, the same is now well settled by the decisions of the Hon'ble Supreme Court, in the cases of Amrit Paul Singh and another versus TATA AIG General Insurance Company Limited and others reported in (2018) 7 SCC 558 and National Insurance Company vs. Swaran Singh and others reported in 2004 (1) TN MAC 104 (SC), wherein, it has been held that in the case of policy violation, the insurer is liable to compensate and recover the same from the insured.

8. In the case on hand, the vehicle which caused the accident was not possessing a valid fitness certificate, which is a policy violation. Applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions, the Tribunal has rightly granted pay and recovery rights to the appellant / Insurance Company.

9. In view of the settled law, the first contention raised by the appellant / Insurance Company is rejected by this Court.

10. Insofar as the second contention raised by the appellant / Insurance Company with regard to the quantum of compensation is concerned, the same will have to be necessarily rejected by this Court for the following reasons :

a) In the claim petition filed before the Tribunal, the first respondent / claimant has pleaded that he was running a dairy farm and was earning Rs.15,000/-p.m., at the time of the accident. The Tribunal has fixed the monthly income of the first respondent / claimant at Rs.5,000/- on a notional basis. After giving due consideration to the year of the accident, which happened in the year 2012, the fixation of the notional monthly income of the first respondent / claimant by the Tribunal at Rs.5,000/- cannot be considered to be excessive.

b) The Doctor, who examined the first respondent / claimant and was examined as a witness before the Tribunal as PW2 has assessed the disability of the first respondent / claimant at 28%, as per Ex.P10. The Tribunal has awarded the disability compensation of Rs.56,000/- to the first claimant /claimant, calculated at Rs.2,000/- per percentage of disability i.e. 28 x Rs.2000/-. After giving due consideration to the year of the accident, the assessment made by the Tribunal is a correct assessment.

c) The first respondent / claimant has sustained both bone fracture in the right leg and multiple injuries all over his body, as seen from the disability certificate(Ex.P10) issued by the Doctor. The Tribunal has rightly considered the nature of injuries and has rightly awarded Rs.30,000/- towards loss of income to the first respondent / claimant during the period of his treatment, calculated for a period of six months at Rs.5,000/-p.m. Therefore, there is no scope for interference with regard to the same also.

11. The Tribunal has also awarded Rs.85,000/- towards medical expenses, which is supported by medical bills, which were filed as per Ex.P8 series, before the Tribunal. Therefore, there is no scope for interference with regard to the compensation awarded towards medical expenses also.

12. The Tribunal has awarded a compensation of Rs.20,000/- towards pain and suffering, Rs.10,000/- towards Extra nourishment; Rs.1,000/- towards Transportation and Rs.25,000/- towards loss of amenities and enjoyment of life, which cannot be considered to be excessive as alleged by the appellant / Insurance Company.

13. For the foregoing reasons, the second contention raised by the appellant with regard to the quantum of compensation is also rejected by this Court.

14. In the result, there is no merit in this appeal and accordingly, the Civil Miscellaneous Appeal shall stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. The Appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.1000 of 2012 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) at Coimbatore, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge
 Motor Accident Claims Tribunal,
 at Coimbatore.

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

+1cc to Mr.J.Chandran, Advocate, sr no.31639

C.M.A.No.2704 of 2014

AD(CO)
RMP(23/04/2021)