IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2740 of 2014
and
M.P.No.1 of 2014

United India Insurance Co. Ltd.,
No.64, Armenian Street,
Chennai - 600 001. ... Appellant

vs.

1R.Murugan
2.D.Sathish Kumar ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.06.2014 made in M.C.O.P.No.1549 of 2012 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.C.Paranthaman
For Respondents : Mr.P.Chinnaraj for R1
R2 - Exparte in Tribunal

JUDGMENT
(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the award dated 12.06.2014 passed by the Motor Accidents Claims Tribunal, V Court of Small Causes, Chennai in MCOP No.1549 of 2012.

2. The first respondent /claimant sustained injuries on 13.12.2011 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, V Court of Small Causes, Chennai in MCOP No.1549 of 2012 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal, V Court of Small Causes, Chennai under the impugned award directed the appellant / Insurance Company to pay the first respondent / claimant a compensation of Rs.1,80,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income for 6 months	39000
Extra nourishment & Transportation	25000
Damage to clothes and articles	1000
Attender Charges	3000
Medical expenses	7000
Pain and suffering	25000
Disability of 40% at the rate of Rs.2000/- per percentage	80000
Total	1,80,000

4. Heard C.Paranthaman, learned counsel for the appellant / Insurance Company and Mr.P.Chinnaraj, learned counsel for the first respondent. The second respondent has remained ex-parte both before the Tribunal as well as before this Court.

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

a. They have questioned the liability on the ground that at the time of the accident, the insured vehicle was carrying excess persons and therefore, the Tribunal ought not to have granted pay and recovery rights, since the insured has violated the policy conditions.

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. Before the Tribunal, the first respondent / claimant has filed nine documents which were marked as Exs.P1 to P9 and two witnesses were examined on his side viz., the first respondent / claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the appellant / Insurance company, six documents were filed, which were marked as Exs.R1 to R6 and three witnesses were examined, viz., RW1 to RW3.

8. Insofar as the first contention raised by the appellant / Insurance Company is concerned, the same is now well settled by the decision of the Hon'ble Supreme Court in the case of National Insurance Company vs. Swaran Singh and others reported in 2004 (1) TN MAC 104 (SC), wherein, it has been held that in case of a policy violation, the insurer is liable to compensate the claim and thereafter recover the same from the insured. The Tribunal has rightly followed the said decision and has granted pay and recovery rights to the appellant / Insurance Company, in view of the fact that at the time of the accident, the insured motor cycle was carrying excess persons than the permissible limit. Therefore, the first contention raised by the appellant / Insurance Company is rejected by this Court.

9. Insofar as the second contention raised by the appellant / Insurance Company with regard to the quantum of compensation is concerned, the same will also have to be 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 aged 40 years and employed as Turner at M.N.Lath Works, M.K.B. Nagar, Chennai - 39, earning Rs.600/- per day. According to him, he sustained head injury, dislocation of right shoulder, internal injury at right ankle and multiple injuries all over his body, as a result of the accident caused by the insured motor cycle.

b) The Doctor, who issued the disability certificate (Ex.P9) was also examined as a witness(PW2) and has assessed the disability of the first respondent / claimant at 50%. However, the Tribunal has reduced the same to 40% and has awarded Rs.80,000/- as compensation to the first respondent / claimant, calculated at Rs.2,000/- per percentage of disability. The year of the accident is 2011. After giving due consideration to the year of the accident, this Court is of the considered view that the assessment of the disability compensation by the Tribunal is a correct assessment.

10. The Tribunal has fixed the notional monthly income of the first respondent / claimant at Rs.6,500/-. In the claim petition, the first respondent/ claimant has pleaded that he was earning Rs.600/- per day, which works out to Rs.18,000/-p.m. at the time of the accident. After giving due consideration to the year of the accident and the nature of avocation of the first respondent / claimant, the assessment of the notional monthly income of the first respondent / claimant by the Tribunal at

Rs.6,500/- is a correct assessment. The first respondent / claimant has suffered head injuries, dislocation of right shoulder, and injury in his right ankle and multiple injuries all over the body. After giving due consideration to the nature of injuries, this Court is of the considered view that the compensation awarded by the Tribunal towards loss of income calculated for a period of six months at Rs.39,000/- is a correct assessment.

11. The Tribunal has also awarded Rs.25,000/- towards Extra nourishment & Transportation, Rs.1,000/- towards Damage to clothes and articles; Rs.3,000/- towards Attender Charges; Rs.7,000/- towards Medical expenses; Rs.25,000/- towards pain and suffering, which cannot be considered to be excessive as alleged by the appellant / Insurance Company.

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

13. 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.

14. 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.1549 of 2012 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, 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.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsi2

To

1.The Motor Accident Claims Tribunal,
V Court of Small Causes, Chennai.

Copy to

The Section Officer,
Vernacular Section,
Madras High Court.

+1 CC to Mr.C.Paranthaman, Advocate sr 31262.

SRA(CO)
SP(30/04/2021)