

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.3635 of 2014

and M.P.No.1 of 2014

The Branch Manager,
National Insurance Company Limited,
Court Street,
Tiruppur.

...Appellant/2nd Respondent

vs.

1. Veluswamy

... Respondent/Claimant

2. Pazhaniswamy

... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment passed in MCOP No.1434 of 2010 dated 21.12.2012 on the file of the II Additional District and Sessions Court, Tiruppur, Motor Accidents Claims Tribunal, Tiruppur.

For Appellant : Ms.N.B.Surekha

For Respondents : Mr.Lokesh for

Mr.Ma.Pa.Thangavel for R1

R2 - served - No appearance

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the appellant /Insurance Company challenging the award dated 21.12.2012 passed by the Motor Accidents Claims Tribunal, II Additional District and Sessions Judge, Tiruppur in MCOP No.1434 of 2010.

2. The first respondent /claimant sustained injuries on 19.11.2010 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, (II Additional District and Sessions Court, Tiruppur), in MCOP No.1434 of 2010 seeking compensation for the injuries sustained by him as a result of the accident.

3. The Motor Accident Claims Tribunal, (II Additional District and Sessions Court, Tiruppur), under the impugned award directed the appellant / Insurance Company to pay the first respondent / claimant a compensation of Rs.3,99,000/- together with interests and costs as detailed hereunder :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of income	3,57,000
Pain and suffering	30000
Medical Expenses	7000
Transportation and for nutrition	5000
Total	399000

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

a. They are not liable to compensate the claim, since the Tribunal failed to incorporate the pay and recovery rights granted to the appellant / Insurance Company, even though a categorical finding has been given under the impugned award that they are entitled for recovery rights since the rider of the motor cycle, who caused the accident was not possessing a driving licence.

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

5. Heard Ms.N.B.Surekha, learned counsel for the appellant / Insurance Company and Mr.Lokesh, learned counsel for the first respondent. Despite service of notice on the second respondent, there is no appearance on his side.

6. This Court has also perused and examined the materials and evidence available on record.

7. Before the Tribunal, the first respondent / claimant has filed five documents which were marked as Exs.P1 to P5 and three witnesses were examined on his side viz., the first respondent / claimant himself as PW1, Murugan, an eye witness to the accident as PW2 and the Doctor who examined him as PW3. On the side of the Appellant / Insurance Company, two documents were filed, viz., copy of MVI report as Ex.R1 and the insurance policy as Ex.R2 and two witnesses were examined on their side viz., Inspector of RTO as RW1 and the official of the appellant / Insurance Company as RW2.

8. Insofar as the first contention raised by the appellant / Insurance Company is concerned, admittedly, the rider of the motor cycle was not possessing a driving licence at the time of

the accident. It is settled law that in case of policy violation, the insurance company will have to pay the claimant the compensation amount assessed by the Tribunal and thereafter recover the same from the insured. In the instant case, the Tribunal has also observed in the impugned order that the rider of the motor cycle was not possessing a driving licence and accordingly, pay and recovery rights was granted to the appellant / Insurance Company in the discussion portion of the award. However, in the operative portion of the award as well as in the impugned decree, the pay and recovery rights granted to the appellant has not been incorporated. Accordingly, this Court makes it clear that the appellant / Insurance Company is entitled for pay and recovery rights, in view of the policy violation committed by the second respondent, who is the owner of the vehicle.

9. Thus, the first contention raised by the appellant / Insurance Company with regard to the non incorporation of a pay and recovery rights in the operative portion of the award as well as in the decree, is accepted 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 has been considered in the following paragraphs :-

a) In the claim petition filed before the Tribunal, the first respondent / claimant has pleaded that he was a Labourer doing agricultural activities, earning Rs.6,000/-p.m., at the time of the accident. However, in the absence of any documentary evidence, the Tribunal has fixed the monthly income of the first respondent / claimant at Rs.5,000/- on notional basis. The year of the accident is 2010. The Tribunal ought to have given due consideration to the avocation of the first respondent / claimant as well as the year of the accident. This Court after giving due consideration to the avocation of the first respondent / claimant as well as the year of the accident fixes the notional monthly income of the first respondent / claimant at the time of the accident as Rs.5,500/-, instead of Rs.5,000/- fixed by the Tribunal.

b) The Doctor, who issued the disability certificate (Ex.P4) was also examined as a witness (PW3). He has assessed the disability of the first respondent / claimant at 37% but the Tribunal has reduced the same to 35%. The first respondent / claimant has sustained head injuries (right frontal contusion), fracture in right shoulder and face and multiple abrasions all over his body. However, he was hospitalised only for a period of four days, as seen from the discharge summary, which was marked as Ex.P2 before the Tribunal. When the first

respondent / claimant was hospitalised only for a period of four days, the assessment of whole body disability of the first respondent / claimant by the Tribunal at 35% is excessive and it has to be necessarily reduced. After giving due consideration to the nature of the injuries sustained by the first respondent / claimant and the period of hospitalisation, this Court fixes the whole body disability of the first respondent / claimant at 25% instead of 35% fixed by the Tribunal. The first respondent / claimant was aged 39 years at the time of the accident. For a person, aged 39 years, the correct multiplier to be adopted as per the decision of the Hon'ble Supreme Court in the case of Sarala Verma & Ors vs. Delhi Transport Corp. & Anr. reported in 2009 6 SCC 121 is 15 and not 17, which has been erroneously adopted by the Tribunal. Accordingly, the same is modified by this Court. Therefore, the compensation under the head loss of earning capacity assessed by the Tribunal is reduced from Rs.3,57,000/- to Rs.2,47,500/- by this Court as detailed hereunder :-

$$\text{Rs.5,500/-} \times 12 \times 15 \times 25\% = \text{Rs.2,47,500/-}$$

11. The Tribunal has awarded a compensation of Rs.30,000/- towards pain and suffering and Rs.7,000/- towards medical expenses, in accordance with the medical bills produced by the first respondent / claimant before the Tribunal. The same is confirmed by this Court as it cannot be considered to be excessive as alleged by the appellant / Insurance Company.

12. Insofar as the compensation towards transportation and extra nourishment awarded by the Tribunal at Rs.5,000/- is concerned, the same will have to be necessarily enhanced but under two separate heads. This Court awards a compensation of Rs.10,000/- towards transportation and Rs.5,000/- towards extra nourishment instead of Rs.5,000/- granted by the Tribunal towards transportation and extra nourishment put together.

13. The Tribunal has erroneously failed to award any compensation towards attender charges and loss of amenities, which the first respondent / claimant is legally entitled to in view of the nature of the injuries sustained by him and his hospitalisation. After giving due consideration to the nature of injuries and the period of hospitalisation, this Court awards a compensation of Rs.5,000/- towards attender charges and Rs.5,500/- towards loss of amenities, in accordance with settled practice.

14. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	3,57,000	2,47,500
Pain and suffering	30000	30000
Medical expenses	7000	7000
Transporation and for nutrition	5000	10,000
Attender charges	-	5,000
Amenities	-	5,500
Total	3,99,000	3,10,000

15. In the result, the appeal filed by the appellant / claimant, stands partly allowed by reducing the compensation from Rs.3,99,000/- to Rs.3,10,000/- as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

16. The appellant / Insurance Company is directed to deposit the entire award amount as assessed by this Court 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 MCOP No.1434 of 2010 on the file of the Motor Accidents Claims Tribunal, (II Additional District and Sessions Court), Tiruppur, 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

//True Copy//

Sub Assistant Registrar

Vsi2

To

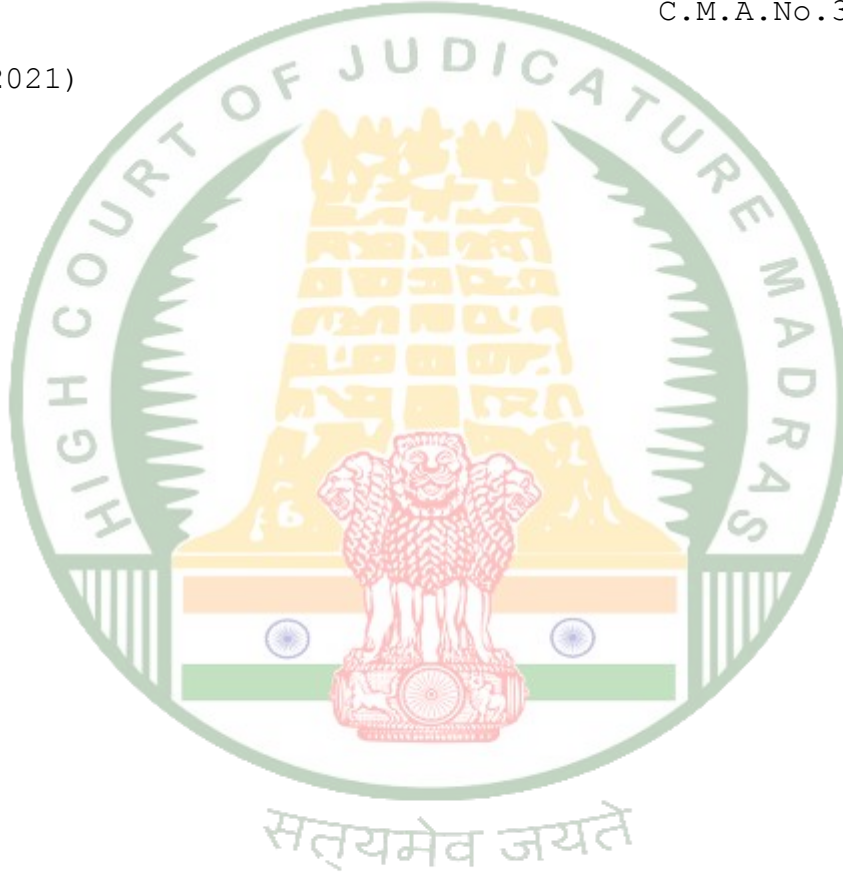
1. The II Additional District and Sessions Court,
Motor Accidents Claims Tribunal,
Tiruppur.

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

+lcc to Mr.N.B.Surekha, Advocate, S.R.No. 31874

C.M.A.No.3635 of 2014

LN (CO)
GN(20/04/2021)



WEB COPY