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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2020

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.3644 and 3645 of 2014
and M.P.Nos.1 and 1 of 2014

C.M.A.No.3644 of 2014

National Insurance Company Limited,
No.18, Court Street,
Tiruppur.

... Appellant/2nd Respondent

vs.

1.Kondammal
2.Selvaraj

... 1st Respondents/Petitioner
... 2nd Respondents/1st Respondent

C.M.A.No.3645 of 2014

National Insurance Company Limited,
No.18, Court Street,
Tiruppur.

...Appellant/2nd Respondent

vs.

1.Paramasivam
2.Selvaraj

... 1st Respondents/Petitioner
... 2nd Respondents/1st Respondent

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree passed in M.C.O.P.Nos.881 and 882 of 2010 dated 18.03.2013 on the file of the Motor Accident Claims Tribunal, 1st Additional District and Sessions Court, Tiruppur.

For Appellant in both appeals : Ms.N.B.Surekha
For Respondents in both appeals : Mr.Ma.P.Thangavel for R1
for R2
- No appearance

COMMON JUDGMENT

(This case was heard through Video Conferencing)
These two appeals have been filed by the Insurance Company challenging the common Award dated 18.03.2013 passed by the



Motor Accident Claims Tribunal, 1st Additional District and Sessions Court, Tiruppur in M.C.O.P.Nos.881 and 882 of 2010.

2. Heard Ms.N.B.Surekha, learned counsel for the Appellant, Mr.Ma.P.Thangavel, learned counsel for the first respondent. Despite the name of the second respondent having been printed in the cause list, there is no appearance on his side.

3. The first respondent in the respective appeals is the claimant. Both of them sustained injuries on 12.07.2010 as a result of an accident caused by a vehicle owned by the second respondent and insured with the Appellant. They preferred separate claims before the Motor Accident Claims Tribunal seeking compensation.

4. The Motor Accident Claims Tribunal under the impugned Common Award directed the Appellant Insurance Company to pay the first respondent in M.C.O.P.No.881 of 2010 a compensation of Rs.1,05,185/- and M.C.O.P.No.882 of 2010 a compensation of Rs.2,29,180/- together with interest and cost.

5. The details of the compensation awarded to the first respondent in M.C.O.P.No.881 of 2010 are as follows:

For 25% disability	-	Rs.50,000/-
Pain and suffering	-	Rs.25,000/-
Loss of consortium	-	Rs.20,000/-
Extra nourishment	-	Rs.2,000/-
Transportation	-	Rs.2,000/-
Medical expenses	-	Rs.6,185/-

Total		Rs.1,05,185/-

6. The details of the compensation awarded to the first respondent in M.C.O.P.No.882 of 2010 are as follows:

Pecuniary loss	-	Rs.1,78,200/-
Pain and suffering	-	Rs.25,000/-
Loss of consortium	-	Rs.20,000/-
Extra nourishment	-	Rs.2,000/-
Transportation	-	Rs.2,000/-
Medical expenses	-	Rs.1,980/-

Total		Rs.2,29,180/-

7. Before the Tribunal, the first respondent in both the appeals put together have filed 9 documents which were marked as Exs.A1 to A9 and four witnesses were examined on their side namely, PW1 to PW4. On the side of the Appellant Insurance Company, four documents was filed which were marked as Exs.B1 to



B4 and three witnesses were examined on their side namely, RW1 to RW3.

8. The Appellant Insurance Company has challenged the common Award passed in favour of the respective first respondent on the following grounds:

(a) The driver of the vehicle insured with the Appellant was not possessing a valid driving license at the time of the accident.

(b) There was a delay of 10 days in registering the FIR against the driver of the insured vehicle.

(c) The compensation awarded by the Tribunal to the respective first respondent is excessive and that the Tribunal has erroneously adopted multiplier method in assessing the compensation to the first respondent in MCOP.882 of 2010.

9. With regard to the first contention raised by the Appellant as regards non-possessioning of the driving license by the driver of the insured vehicle is concerned, the said issue is now well settled by various decisions of the Hon'ble Supreme Court as well as High Courts which has held that the Appellant Insurance Company is liable to pay the claimants the compensation and recover the same from the insured if the driver was not possessing driving license at the time of the accident. In the case on hand, the Tribunal has rightly concluded that the Appellant Insurance Company is entitled for pay and recovery rights. However, it is the contention of the learned counsel for the Appellant that it has not been incorporated in the decree. This Court has also perused the decree and as rightly contented by the learned counsel for the Appellant, the decree has not incorporated the pay and recovery rights granted to the Appellant Insurance Company. Accordingly, pay and recovery rights is granted to the Appellant by directing them to pay the assessed compensation amount as determined by the Tribunal to the respective first respondent in both the appeals on such payment, recover the said amount from the second respondent in both these appeals who is the owner of the vehicle (insured).

10. Insofar as the second contention raised by the Appellant namely, the delay in registering the FIR against the driver of the insured vehicle is concerned, the injuries sustained by the respective first respondent are grievous injuries which may have resulted in delay in registration of FIR. Further, no evidence has been produced by the Appellant Insurance Company before the Tribunal that the accident which resulted in the claim was not the fault of the driver of the insured vehicle. While that being so, the Tribunal has rightly passed an award holding the Appellant Insurance Company liable to compensate the claim of the respective first respondent in both the appeals. Further, the delay being only 10 days, it cannot be treated as an



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inordinate delay due to the fact that the injuries sustained by the respective first respondent are grievous injuries, that too when the Appellant Insurance Company has not placed any documentary evidence to prove that the accident was not a genuine accident.

11. Insofar as the third contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, the same is also unsustainable for the following reasons:

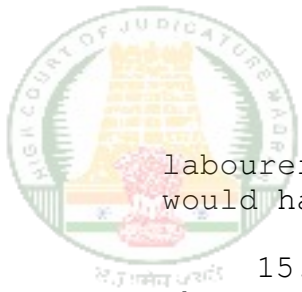
(a) The Tribunal has assessed the notional monthly income for the respective first respondent in both these appeals at Rs.4,500/-. The year of the accident is 2010. The respective first respondent in the claim petitions have pleaded that they were labourers (coolie) and they were earning Rs.6,000/- per month at the time of the accident. This Court is of the view that the assessment of notional monthly income at Rs.4,500/- for the respective first respondent cannot be treated as excessive as in many cases higher sum has been fixed as notional income by this Court for an accident of the year 2010. The first respondent in MCOP.No.881 of 2010 has sustained 25% disability as assessed by the Doctor who examined her (PW3). The Tribunal has awarded the disability compensation based on percentage basis to the first respondent in MCOP.No.881 of 2010 at Rs.50,000/- calculated at Rs.2,000/- per percentage of disability. The compensation awarded under various heads as observed in the beginning of this judgment is also a just compensation in the considered view of this Court.

12. The learned counsel for the Appellant has raised serious objection only with regard to the compensation awarded by the Tribunal to the first respondent in MCOP.No.882 of 2010.

13. The Tribunal ought not to have adopted multiplier method. The first respondent in MCOP.No.882 of 2010 has sustained the following injuries:

- (a) Wrist bone fracture
- (b) Head injuries
- (c) Injuries to his eyes and lost his left eye sight

14. Before the Tribunal he has also filed the disability certificate of the Doctor who assessed him which was marked as Ex.A9. The Doctor had assessed his disability 37.4%. However, the Tribunal has assessed the disability only at 30% and has applied multiplier method for assessing the compensation towards loss of earning power to the first respondent in MCOP.No.882 of 2010. Having sustained grievous injuries and being a coolie aged 55 years at the time of the accident, the injuries sustained by him would have prevented him from working as a



labourer (coolie) for a long period of time due to his age as it would have taken more number of years to heal.

15. After giving due consideration to the injuries as well as the age of the first respondent in MCOP.No.882 of 2010 and his avocation, the Tribunal has rightly adopted the multiplier method in assessing the compensation in the considered view of this Court. Excepting for the observations made by this Court with regard to the incorporation of pay and recovery rights to the Appellant Insurance Company in the decree, the other findings of the Tribunal are confirmed by this Court.

16. For the foregoing reasons, the appeals are partly allowed. The respective first respondent in both these appeals are permitted to withdraw their respective amount awarded by the Tribunal. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional District and Sessions Judge,
The Motor Accident Claims Tribunal,
Tiruppur.
2. The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.Nos.3644 and 3645 of 2014

PP(CO)
GMY(01/09/2021)