IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.2155 OF 2010
AND
CMA NO.1221, 1247 OF 2011

1.Kannan

2.Pownammal

3.Kanniyappan

4.Sankar

5.Palani ...Appellants/ Claimants in CMA No.2155 of 2010

S.Dhanasekaran ...Appellant / Claimant in CMA No.1221 of 2011

A.Vadivel ...Appellant/ Claimant in CMA No.1247 of 2011

Vs.

1.M.Kalyani (deceased),

2.The Divisional Manager,
United India Insurance Company Limited,
Katpadi Road, Vellore 632 004.

3.S.Vijyaya

4.The Divisional Manager,
United India Insurance Company Limited,
Katpadi Road, Vellore 632 004.

5.Mani

6.Shanmugam
(R5 and R6 are brought on record as LRs of the deceased R1 vide order of this court dated 28.03.2019 made in MP No.2 and 3 of 2014 in CMA Nos.2155 of 2010, 1221 of 2011 & 1247 of 2011)
...Respondents in all CMAs

Prayer in CMA No.2155 of 2010 : This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.11.2009 passed in MCOP No.132 of 2006 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Ranipet.

Prayer in CMA No.1221 of 2011 : This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.11.2009 passed in MCOP No.213 of 2006 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Ranipet.

Prayer in CMA No.1247 of 2011 : This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.11.2009 passed in MCOP No.197 of 2006 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Ranipet.

In all CMAs

For Appellant/s : Mr.M.Sivakumar

For Respondents : Mr.S.Arunkumar for R2 and R4
R1- Died
No appearance for R5 and R6 - Served

COMMON JUDGMENT

Challenging the judgment and decree passed by the Tribunal in MCOP No.132 of 2006, the claimants/appellants have filed CMA No.2155 of 2010.

Challenging the judgment and decree passed by the Tribunal in MCOP No.213 of 2006, the claimant/appellant has filed CMA No.1221 of 2011.

Challenging the judgment and decree passed by the Tribunal in MCOP No.197 of 2006, the claimant/appellant has filed CMA No.1247 of 2011.

2. The claimants/appellants in CMA 2155 of 2010 have filed a claim petition in MCOP No.132 of 2006 before the Tribunal seeking compensation of Rs.8,00,000/- for the death of one Vinayagam; the claimant/appellant in CMA No.1221 of 2011 has filed a claim petition in MCOP No.213 of 2006 seeking compensation of Rs.50,000/- and the claimant/appellant in CMA No.1247 of 2011 has filed a claim petition in MCOP No.197 of 2006 seeking compensation of Rs.1,00,000/-

3. The brief case of the claimants in all the claim petitions is as follows.

On 12.05.2006, one Vinayagam and the petitioners in the claim petitions in MCOP No. 197/2006, MCOP No.200/2006 and MCOP No.213 of 2006 were travelling in an autorickshaw bearing registration No.TN-07-Y-5742 along Chennai-Bangalore National Highways Road and while nearing opposite to the Government I.T.I at Abdullahpuram Junction road, the driver of the auto had moved the vehicle in a wrong route, due to which a tempo van bearing registration No.TN65 B 1400 came from opposite side hit the autorickshaw, due to which the said Vinayagam died on the spot and the other petitioners sustained grievous injuries. According to the petitioners, since the first and third respondents are the owners of the vehicles involved in the accident and the second and fourth respondents are the insurers of the said vehicles, all the respondents are liable to pay compensation to the petitioners.

4. The respondents 2 to 4 resisted the claim petition by filing their respective counter affidavit.

5. Before Tribunal, on the side of the petitioners PW1 to PW5 were examined and Ex.P1 to Ex.P15 were marked. On the side of the respondents, RW1 was examined and Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded compensation in the claim petitions, as extracted hereunder.

In MCOP No.132 of 2006

Heads	Amount in Rs.
Loss of income and Loss of dependency (6000-2000 x15x12)	7,20,000
Loss of love and affection 10000x5	50,000
Funeral expenses	5,000
Transportation charges	5,000
Total	7,80,000

In MCOP No.213 of 2006

Heads	Amount in Rs.
Pain and suffering	20,000
Disability	55,000
Transportation charges	2,000
Extra nourishment	2,000
Damages to clothes	1,000
Medical expenses	82,134
Total	1,62,134

In MCOP No.197 of 2006

A sum of Rs.10,500/- was awarded as compensation totally towards " Pain and sufferings, Medical and Transport Expenses and Extra Nourishment ".

7. Not satisfied with the Award passed by the Tribunal, the claimants/appellants are before this court to enhance the compensation and also to direct the insurance company to pay the compensation to the claimants.

8. Heard the learned counsels for the parties and also I have perused the materials on record.

9. Now the point for determination is

(i) Whether the insurance company is liable to pay compensation to the claimants.

(ii) Whether the award passed by the Tribunal has to be enhanced?

10. Point No.1

The learned counsel appearing for the claimants/appellants submitted that since the vehicles involved in the accident namely autorickshaw and tempo van were insured with the insurance companies/ the respondents two and four, they are liable to pay compensation to the claimants and hence the Tribunal ought to have ordered the insurance companies to pay the compensation to the claimants and then recover the same from the owners of the vehicles. However, without appreciating the above said facts, the Tribunal had erroneously dismissed the claim of the petitioners against the insurance companies and directed the first respondent/owner of the autorickshaw to pay compensation to the claimants. He also submitted that the compensation awarded by the Tribunal in MCOP No.213 of 2006 and MCOP No.197 of 2006 is very meagre and hence, the same has to be enhanced.

11. The learned counsel appearing for the respondents 2 and 4 submitted that even according to the claimants, the accident took place was only due to the negligence on the part of the driver of the autorickshaw and hence, the insurance company is not liable to pay compensation to the claimants. It is further submitted that the driver of the vehicle had not obtained " Badge" to drive commercial vehicles on the date of accident and that the auto involved in the accident had capacity of 4 in all, whereas, seven persons, including driver had travelled in the auto and hence, the claimants are not entitled to claim compensation. It is also submitted that after analysing the evidence on record, the Tribunal has rightly arrived just and reasonable compensation and has rightly dismissed the claim petitions as against the insurance company and directed the first respondent/ owner of the autorickshaw to

pay compensation to the claimants. Therefore, the award passed by the Tribunal need not be modified.

12. The learned counsel appearing for the appellants relied on a decision in Mukund Dewangan Vs. Oriental Insurance Company Limited reported in 2017 14 Supreme Court Cases 663, in which at paragraph No.60 it is decided as follows.

> 60. Thus, we answer the questions which are referred to us thus:
>
> 60.1. " Light motor vehicle" as defined in Section 2(21) of the Act would include a transport vehicle as per the weight prescribed in Section 2(21) read with Sections 2(15) and 2(48). Such transport vehicles are not excluded from the definition of the light motor vehicle by virtue of Amendment Act 54 of 1994.
>
> 60.2. A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg would be a light motor vehicle and also motor car or tractor or a roadroller, " unladen weight" of which does not exceed 7500 kg and holder of a driving licence to drive class of " light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg or a motor car or tractor or roadroller, the " unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54 of 1994 and 28.03.2001 in the form.
>
> 60.3. The effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14.11.1994 while substituting clauses (e) to (h) of Section 10(2) which contained " medium goods vehicle" in Section 1092)(e), " medium passenger motor vehicle" in Section 10(2)(f), "heavy goods vehicle" in Section 10(2)(g) and " heavy passenger motor vehicle" in Section 10(2)(e) related only to the aforesaid substituted classes only. It does not exclude transport vehicle, from the purview of Section 10(2)(d) and Section 2(41) of the Act. i.e. light motor vehicle.
>
> 60.4. The effect of amendment of Form 4 by insertion of " transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of " light motor vehicle" continues to be the same as it was and has not been

changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect.

13. The main contention of the insurance company is that on the date of accident, the driver of the auto was not having " Badge" to drive the commercial vehicle and hence, the insurance company cannot be held liable to pay compensation. In the present case, the vehicle involved in the accident was a passenger vehicle. Therefore, the above decision of the Honorable Supreme Court is squarely applied to the present case. The insurance company cannot escape from its liability to pay a valid compensation to the claimants, who suffered due to the accident. Therefore, this court is of the view that the insurance company has to pay the compensation to the claimants at the first instance and then recover the same from the owner of the autorickshaw. The Point No.1 is answered accordingly.

14. Point No.2

As far as the quantum of compensation awarded by the Tribunal is concerned, after analysing all the materials on record and after discussing elaborately, the Tribunal has awarded a just and reasonable compensation to the claimants in all the claim petitions and the same does not warrant any interference by this court. Therefore, the compensation awarded by the Tribunal in all the claim petitions are unaltered. The point No.2 is answered accordingly.

15. In the result,

(i) The appeal in CMA No.2155 of 2010, CMA No.1221 of 2011 and CMA No.1247 of o2011 are partly allowed, no costs, and the Award passed by the Tribunal is modified to the effect that the second respondent/insurance company is directed to pay the compensation as awarded by the Tribunal in the claim petitions in MCOP No.132 of 2006, MCOP No.213 of 2006 and MCOP No.197 of 2006 respectively, within a period of 12 weeks from the date of receipt of a copy of this order, less the amount already deposited and then, recover the same from the first respondent/ owner of the autorickshaw.

(ii) On such deposit being made by the second respondent, the claimants are entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

mst

To

The Subordinate Judge,
Motor Accident Claims Tribunal,
Ranipet, Vellore.

+3ccs to Mr.C.Prabakaran, Advocate SR.No.1999, 2000 & 2002

+1cc to Mr.S.Arunkumar, Advocate SR.No.2305

CMA.No.2155 of 2010,
CMA No.1221of 2011 and
CMA No. 1247 of 2011

EV(CO)
RVM(22/09/2021)