IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1272 of 2016
and C.M.A.No.1438 of 2017
and C.M.P.No.9807 of 2016

C.M.A.No.1272 of 2016

United India Insurance Co. Ltd.,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai – 600 006. ...Appellant / 2nd Respondent

Vs

1.P.Sumathi
2.P.Narasimhan ...Respondents / Petitioner / 1st Respondent

C.M.A.No.1438 of 2017

P.Sumathi ...Appellant / Petitioner

Vs

1.P.Narasimhan
(R1 remained exparte before the Forum
hence his presence may be dispensed with)

2.United India Insurance Co. Ltd.,
No.134, Greams Road,
IV Floor, Anna Salai,
Chennai – 600 006. ...Respondents / Respondents

Prayer in CMA 1272/2016: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 10.2.2016 made in M.C.O.P.No.2400 of 2013 on the file of the Motor Accidents Claims Tribunal (In the IV Court of Small Causes), Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.F.Terry Chella Raja for R1
R2-served- No appearance

Prayer in CMA 1438/2017: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.02.2016 made in M.A.C.T.O.P.No.2400 of 2013 on the file of the Motor Accidents Claims Tribunal, IV Court of Small Causes), Chennai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1 - Exparte
Mr.D.Bhaskaran for R2

COMMON JUDGMENT

C.M.A.No.1272 of 2016 has been filed by the Insurance Company challenging the Award dated 10.02.2016 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai in MCOP.No.2400 of 2013 on the following grounds:

(a)The Tribunal failed to take note of the absence of valid permit and fitness certificate to ply the vehicle and therefore according to them, the question of fastening the liability on the Insurance Company will not arise.

(b)The Insurer (owner of the vehicle) having willfully violated the policy conditions, the claimants are not entitled for any compensation from the Insurance Company.

(c)The Tribunal failed to consider the evidence of RW1 and RW2 and has also properly not appreciated the documents filed by the Insurance Company namely Exs.R1 to R5.

2.C.M.A.No.1438 of 2017 has been filed by the claimant seeking for enhancement of compensation as according to her, the compensation awarded by the Tribunal under the Award dated 10.02.2016 passed by the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai in MCOP.No.2400 of 2013 which is also the subject matter of C.M.A.No.1272 of 2016 is inadequate and not a just compensation.

3.The Tribunal under the impugned Award directed the Appellant in C.M.A.No.1272 of 2016 to pay a compensation of Rs.1,69,500/- to the claimant who is the Appellant in C.M.A.No.1438 of 2017 a compensation of Rs.1,69,500/- as detailed hereunder:

Particulars	Amount (Rs.)
Disability	90,000
Pain and suffering	30,000
Extra nourishment	5,000
Transport to Hospital	5,000
Damages to clothes	1,000
Attender charges	6,250
Medical expenses	15,500
Future Medical Expenses	5,000
Loss of Income	6,500
Loss of Amenities	5,000
Total	Rs.1,69,250/-
The same is rounded off to Rs.1,69,500/-	

4.Before the Tribunal, the Insurance Company has also filed their counter wherein they have categorically stated that the insured (owner of the vehicle) has committed policy violation by not having a valid fitness certificate.

5.RW1, the RTO official has also deposed before the Tribunal that on the date of the accident, the insured Auto bearing Registration No.TN-10-C-7233 was not possessing a valid fitness certificate. Through RTO official, Mr.Karthik (RW1), the permit copy for the insured Auto has been marked as Ex.R3 before the Tribunal. As seen from the permit, it got expired on 06.06.2010 itself whereas the accident happened on 08.02.2013. Therefore, it is clear that the insured (owner of the vehicle) who is the second respondent in C.M.A.No.1272 of 2016 has committed policy violation. Despite the conclusive evidence produced by the Insurance Company before the Tribunal that the insured has committed policy violation, the Tribunal erroneously disregarded the evidence produced by the Insurance Company and has failed to grant pay and recovery rights to the Insurance Company which they are legally entitled to as per the settled law. Therefore, based on the materials and evidence available on record, this Court grants pay and recovery rights to the Insurance Company who is the Appellant in C.M.A.No.1272 of 2016 which the Tribunal has erroneously failed to grant under the impugned Award.

6.Insofar as the quantum of compensation awarded by the Tribunal is concerned, this Court considering the nature of injuries sustained by the claimant who is the Appellant in C.M.A.No.1438 of 2017 will have to necessarily enhance the compensation for the following reasons:

(a)The claimant who is the Appellant in C.M.A.No.1438 of 2017 has sustained the following injuries:

(i) fracture of scapula bone on the right shoulder

(ii) fracture of right side of the 3rd, 4th and 5th ribs

(iii) breachial artery

(b)The Doctor has assessed the disability of the claimant at 60% but however, the Tribunal based on the fact that the Doctor has not assessed the whole body disability has reduced the disability of the claimant to 30%.

(c) The claimant was admittedly hospitalized between 08.02.2013 to 26.02.2013 at Government Stanley Hospital, Chennai i.e. for a period of 19 days and thereafter after about one and half years on 25.06.2014 she was once again hospitalized at Sornam Hospital, Chennai and discharged on 30.06.2014. The claimant has filed discharge summaries issued by the respective hospitals which were marked as Exs.P3 and P5 before the Tribunal which are also not disputed by the Insurance Company as seen from the evidence available on record.

(d)Considering the nature of injuries sustained by the claimant and considering the long period of her hospitalization, this Court is of the considered view that the percentage of disability fixed by the Tribunal at 30% is low and it has to be enhanced to 45% by this Court. However, the basis for calculation of the disability compensation at Rs.3,000/- per percentage of disability is a correct assessment made by the Tribunal as the year of the accident is 2013.

7.Since the disability is enhanced from 30% to 45% by this Court, the disability compensation is also accordingly enhanced to Rs.1,35,000/- by this Court from Rs.90,000/- fixed by the Tribunal calculated at Rs.3,000/- per percentage of disability for the 45% disability assessed by this Court.

8.With regard to the quantum of compensation awarded by the Tribunal under the heads pain and suffering, extra nourishment, transport to hospital, damage to clothing, attender charges, medical expenses, future medical expenses and loss of amenities are concerned, the same is a just compensation and does not call for any interference by this Court. However, considering the nature of injuries sustained by the claimant and the long period of hospitalization, this Court is of the considered view that the compensation awarded by the Tribunal towards loss of income at Rs.6,500/- per month calculated for a period of one month is low and it has to be enhanced and has to be calculated for a period of four months instead of for a period of one month fixed by the Tribunal. Accordingly, the compensation towards loss of income is enhanced to Rs.26,000/- (Rs.6,500x 4 = Rs.26,000).

9.For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.2,34,000/- from Rs.1,69,500/- fixed by the Tribunal as detailed hereunder:

Particulars	Award Amount (Rs.)	Enhanced/modified amount (Rs.)
45% Disability (calculated Rs.3,000/- per percentage of disability)	90,000	1,35,000
Pain and suffering	30,000	30,000
Extra nourishment	5,000	5,000
Transport to Hospital	5,000	5,000
Damages to clothes	1,000	1,000
Attender charges	6,250	6,250
Medical expenses	15,500	15,500
Future Medical Expenses	5,000	5,000

Particulars	Award Amount (Rs.)	Enhanced/modified amount (Rs.)
Loss of Income (calculated Rs.6,500 x 4 months)	6,500	26,000
Loss of Amenities	5,000	5,000
Total	Rs.1,69,250/-	Rs.2,33,750/-
Rounded off to	Rs.1,69,500/-	Rs.2,34,000/-

10.In the result, the appeal filed by the Insurance Company in CMA.No.1272 of 2016 is partly allowed by granting pay and recovery rights to the Insurance Company.

11.Since the compensation amount is enhanced by this Court, the appeal filed by the claimant in CMA.No.1438 of 2017 is also partly allowed. The Insurance Company who is the Appellant in CMA.No.1272 of 2016 is directed to deposit the enhanced award amount after deducting the amount already deposited if any to the credit of MCOP.No.2400 of 2013 before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.2400 of 2013 to the bank account of the Appellant/claimant in CMA.No.1438 of 2017 through RTGS within a period of one week thereafter.

12.The Appellant Insurance Company on deposit of the entire amount assessed by this Court is entitled to recover the same from the owner of the vehicle, who is the second respondent in CMA.No.1272 of 2016 and the first respondent in CMA.No.1438 of 2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1. The IV Judge,
The Motor Accident Claims Tribunal,
(Small Causes Court),
Chennai.

2. The Section Officer
V.R.Section,
High Court of Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.25430

C.M.A.No.1272 of 2016 and
C.M.A.No.1438 of 2017

KK(CO)
SB(29/10/2021)