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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.03.2021

Judgment Delivered on : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.2985 of 2011 & 2860 of 2012

CMA.No.2985 of 2011

National Insurance Company Ltd.,
Third Party Motor Cell,
No.751 Anna Salai,
Chennai - 2.

... Appellant / 2nd Respondent

Vs.

1. K.Saravanan

S/o. Kumaraiah

... 1st Respondent / Claimant

2. M/s. Vel Tech Engineering College,
No.42, Avadi Alamadi Raod, Avadi,
Chennai - 600 062.

...2nd Respondent / 1st Respondent

C.M.A.No.2860 of 2012

K.Saravanan

S/o. Kumaraiah

... Appellant / Petitioner

Vs.

1. M/s. Vel Tech Engineering College,
No.42, Avadi Alamadi Raod, Avadi,
Chennai - 600 062.
(Was Set exparte in the Trial Court)

2. National Insurance Company Ltd.,
Third Party Motor Cell,
No.751 Anna Salai,
Chennai - 2.

...Respondent / Respondent



Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.A.C.T.O.P.No.5414 of 2004 dated 09.04.2011 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant in
CMA.No.2860/2012 and
For First Respondent
in C.M.A.No.2985/2011 : Mr.K.Suryanarayanan

For Appellant in
C.M.A.No.2985/2011 and
For Second Respondent in
CMA.No.2860/2011 : Mr.S.Vadivel

R2 in CMA.No.2985/2011
&R1 in CMA.No.2860/2012 : Ex-parte

JUDGMENT

(This case has been heard through video conference)

These Civil Miscellaneous Appeals have been filed challenging the fair and decretal order dated 09.04.2011 passed in MCOP.No.5414 of 2004 by the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

2. The case in brief is as follows:

On 11.09.2004 at 5.10 p.m., when the claimant was riding a motor cycle bearing Registration No.TN-32-B-8031 and proceeding from Karapakkam to Chennai along Poonamallee Trunk Road and near the Porur Roundtana, the bus belonging to the first respondent bearing Registration No. TN-02-C-4777 came in a rash and negligent manner and knocked down the two wheeler driven by the claimant, as a result of which, the claimant sustained the following injuries (1) Bilateral external Iliac vein with injury right internal Iliac vein injury. (2) Perineal laceration with sphincteric tear (3) Degloving injury to shaft of penis and scrotum (4) Extraperitoneal urethral injury and bladder injury (5) Extensive laceration over lower abdominal wall and both upper thighs (6) Open pelvic fracture type B with bladder injury and anus injury (7) Posterior condyle fracture right femur (8)



Fracture neck of fibula right side (9) Lumbosacral plexus injury more on right side (10) Closed degloving injury of right thigh. The claimant underwent surgeries on both thighs and legs. The Doctor who had assessed his injuries, had issued disability certificate, wherein it has been mentioned as 70% disability suffered by the claimant. At the time of accident, the claimant was employed as System Administrator in Roverco Apparel Company and was earning Rs.8250/- per month. After discharge from hospital, due to the injuries and disability, he could not attend his work, subsequently he resigned. The first respondent remained ex-parte before the Tribunal.

3. Mr.K.Suryanarayanan, learned counsel for the appellant/claimant has submitted his arguments. As per his submissions, the claimant had examined himself as P.W.1 and had marked documents Exs.P.1 to P.34 regarding the contentions in the claim petition. The second respondent/Insurance Company denied the contents in the claim petition but during evidence, the manager of the second respondent/Insurance Company was examined as R.W.1 and Exs.R1 to R4 were marked and the Administrative Officer of the Cuddalore Branch of the second respondent/Insurance Company was examined as R.W.2 and Exs.R5 to R8 were marked. The contention of the learned counsel for the second respondent and the evidence was that the policy taken by the first respondent was a fake one. Therefore, the second respondent/Insurance Company is not liable. The Tribunal had rejected the contention of the learned counsel for the second respondent/Insurance Company stating that the vehicle number was provided in the claim petition and the policy number was also referred in the claim petition and the same had been referred by the Motor Vehicle Inspector during the vehicle inspection. Therefore, the contention of the learned counsel for the second respondent/Insurance Company was not considered by the Tribunal while calculating the compensation for 70% disability. If Rs.2,000/- is taken as compensation for each percentage, for 70%, it is Rs.1,40,000/- ($70\% \times 2000 = 1,40,000$). Therefore, the award amount arrived at was on the lower side. That is why the claimant has approached this Court seeking enhancement. This is a fit case for grant of compensation adopting the multiplier system. The claimant as P.W.1 had stated in his evidence, he is unable to perform his work due to the partial permanent disability. In such circumstances, adopting multiplier method would only render justice to the claimant/appellant herein. He had relied on the



reported Rulings of the Hon'ble Supreme Court reported in 2011 1 SCC 343 (Raj Kumar vs Ajay Kumar & Anr).

3 (a). The learned counsel for the second respondent submitted his written arguments. As per his submissions, even though the second respondent before the Tribunal filed the additional counter stating that the insurance policy of the first respondent is a fake one and had examined the witnesses as R.W.1 and R.W.2 on behalf of the second respondent/Insurance Company, their evidence was rightly rejected by the Tribunal on the ground that the Motor Vehicle Inspection Report mentioned that the Insurance Policy details. The R.W.1 also had marked the Insurance Policy details. Whiles, claiming the Insurance Policy as a fake one and that was not accepted by the Tribunal on the ground that the second respondent/Insurance Company had not taken any remarkable action for fake Insurance Policy against the culprits who had issued fake Insurance Policy. Therefore, to protect the victims of the accidents, the Tribunal had rightly rejected the contention of the second respondent/Insurance Company and had fastened the liability on the second respondent/Insurance Company. Based on the said finding of the Tribunal, this appeal preferred by the second respondent/Insurance Company in CMA.No.2985/2011 seeking to set aside the award.

4. Mr.S.Vadivel, learned counsel for the Insurance Company submitted his arguments. As per his submissions, the claim was amended after filing the claim petition by the claimant. Therefore, the second respondent/Insurance Company had to file additional counter to meet the amendments. The policy number furnished by the claimant in the claim petition in MCOP.No.5414 of 2004 was found to be false and fake one by the second respondent/Insurance Company. Therefore, they had denied the policy number referred by the claimant in the claim petition. While facts also the Tribunal had fastened the liability on the second respondent/Insurance Company. Therefore, the Insurance Company had also filed the appeal in CMA.No.2985 of 2011 to set aside the award passed by the Tribunal. The policy number referred by the claimant in the claim petition in MCOP.No.5414 of 2004 referred to a different vehicle bearing different registration and the owner is one Narayanan. Therefore, the order of the Tribunal stated that the second respondent/Insurance Company to pay the compensation to the claimant is erroneous and



against the law. Therefore, the second respondent had filed the CMA.No.2985 of 2011 seeking to set aside the award passed by the Tribunal.

WEB COPY 5. Both Civil Miscellaneous Appeals are borne out of the same accident.

6. CMA.No.2860 of 2012 filed by the Injured victim of the accident seeking enhancement. Whereas, CMA.No.2985 of 2011 filed by the Insurance Company to set aside the award. Therefore, both the appeals are taken up together for disposal.

7. On perusal of the award passed by the Tribunal, it is found that the Tribunal had arrived at a logical conclusion regarding the claim of the claimant/injured victim. The Tribunal accepted the salary bills filed by the injured claimant. Based on the salary, the loss of income for the period of treatment alone was granted. The multiplier system to arrive at a compensation for 70% disability was not exercised by the Tribunal instead of percentage system. Therefore, the claimant felt that the award was on the lower side.

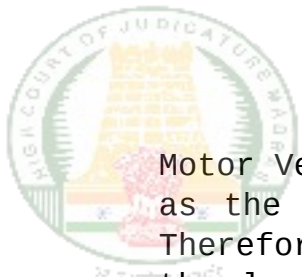
8. Point for consideration

(i) Whether the CMA.No.2860 of 2012 filed by the claimant seeking enhancement has to be allowed.

(ii) Whether the CMA.No.2985 of 2011 filed by the Insurance Company to set aside the award to be allowed.

9. On perusal of the award passed by the Tribunal, it is found that the Tribunal had observed that the Insurance Company had not discharged the burden to disprove the claim of the claimant regarding the Insurance. In the additional counter filed by the second respondent, they had stated that the insurance policy of the first respondent's vehicle had been a fake one as per the evidence of the administrative Officer of the Cuddalore Branch of the second respondent/Insurance Company, who was examined as R.W.2 and Exs.R5 to R8 were marked.

10. For reasons, best known to the second respondent/Insurance Company, the investigator of the second respondent/Insurance Company was not examined. Not only that, during cross examination R.W.1 and R.W.2 had admitted that the



Motor Vehicle Inspector had referred to the policy number as well as the vehicle number in the Motor Vehicle Inspector's Report. Therefore, the Tribunal had rightly rejected the contention of the learned counsel for the second respondent/Insurance Company regarding the fake insurance policy.

11. If the Insurance Company had lodged a criminal complaint and invoked the criminal law in motion to find out the culprits who were involved in fake insurance policy, thereby collecting the insurance subscription from innocent and gullible people, then the contention of the learned counsel for the second respondent/Insurance Company that the policy referred by the claimant is fake one can be accepted. It is to be noted that at the earliest point of time, the claimant had given the insurance policy details. Even if the case of the Insurance Company is to be accepted, without filing any criminal complaint for causing loss to the Insurance Company and seeking the claimant to examine those culprits is found to be unjustified and unreasonable. Without any criminal complaint against the unknown culprits, the contentions of the learned counsel for the Insurance Company cannot at all be accepted. Considering the evidence let in by the claimant as P.W.1 and the Court having accepted the salary bill of the claimant, multiplier method has to be invoked. Adopting the multiplier system, Loss of Income is arrived at as follows:

Taking the multiplier as 17 for the age group 25 to 30 years

Loss of income	::	Rs.8250x12 x17
	::	Rs.16,83,000/-

12. Relying on the Hon'ble Supreme Court Rulings reported in (IV) ACC 678 SC (Ibrahim Vs. Raju), as the prospects of marriage are less for the claimant, due to disability, this Court awards a sum of Rs.50,000/- towards loss of marriage prospects.

13. Since the amount awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:



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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Permanent Disability	1,40,000	16,83,000
2	Loss of income for 445 days	1,22,375	1,22,375
3	Transportation	10,000	10,000
4	Extra Nourishment	10,000	10,000
5	Damages to Clothes	500	500
6	Medical Expenses	4,81,465	4,81,465
7	Pain and Suffering	30,000	30,000
8	Loss of amenities	25,000	25000
9	Marriage Prospects	-	50,000
	Total	8,19,340	24,12,340

14. The point for consideration is answered in favour of the appellant/claimants and against the respondent/Insurance Company.

15. In the light of the above discussion that the second respondent/Insurance Company having not attempted to initiate the criminal proceedings regarding the fake insurance policy which causes loss to the second respondent/Insurance Company. Also, the vehicle owners are cheated and the second respondent/Insurance Company had not taken effective steps to find out the culprits involved in cheating. The submissions of the learned counsel for the Insurance Company/second respondent to set aside the award cannot be accepted. Therefore, the submissions of the learned counsel for the Insurance Company/second respondent, the appellant in CMA.No.2985 of 2011 is rejected.

16. CMA.No.2860/2012 filed by the claimant seeking enhancement of the award amount is allowed. The point for consideration is answered in favour of the respondents/claimants and against the appellant/Insurance Company.

17. CMA.No.2985/2012 filed by the Insurance Company seeking to set aside the award in MCOP.No.5414/2004 on the file of the Motor Accidents Claims Tribunal/Small Causes Court - III, Chennai is dismissed. The point for consideration is answered in favour



of the respondents/claimants and against the appellant/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.5414 of 2004 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai, with accrued interest at the rate of 7.5% per annum from the date of numbering of the appeal till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dh

To

The III Judge,
Motor Accidents Claims Tribunal /
Small Causes Court, Chennai.

Copy To:

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

+4cc to M/s.S.Vadivel, Advocate, S.R.No.19242,19243,24637,24638.

+2cc to Mr.K.Suryanarayanan, Advocate, S.R.No.24384,19331

+1cc to Mr.N.Sundaram, Advocate, S.R.No.24383

C.M.A.Nos.2985 of 2011
& 2860 of 2012

KK(CO)
SB(14/09/2021)