



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.2479 of 2015 and 2101 of 2016
and
MP No.1 of 2015

United India Insurance Co. Ltd.
No.2, Dr. Sankaran Road,
Namakkal Town & District.

... Appellant
in
CMA No.2479 of 2015

Deenadhayalan

... Appellant
in
CMA No.2101 of 2016

Versus

1. Dheenadhayalan
2. Saroja
3. Kanagaraj
4. Aruna
5. Palaniammal

... Respondents
in
CMA No.2479 of 2015

Eswaramoorthi (Died)

1. The United India Insurance Company Ltd.,
No.2, Dr. Sankaran Road,
Namakkal Town & District.
2. Saroja
3. Kanagaraj
4. Aruna
5. Palaniammal

Respondents 2 to 5 remained exparte before
the Tribunal, hence notice may be dispensed with
for the respondents 2 to 5 in this Appeal.

... Respondents
in
CMA No.2101 of 2016

Prayer in CMA No.2479 of 2015 : Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act against the
judgment and decree dated 28.01.2015 made in MCOP No.408 of
2013 on the file of the MACT (ADJ) at Namakkal.



Prayer in CMA No.2101 of 2016 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act for enhancement of compensation awarded in the judgment and decree dated 28.01.2015 made in M.C.O.P. No.408 of 2013 on the file of MACT / Additional District Court at Namakkal

CMA No.2479 of 2015

For Appellant : Ms.I.Malar
For Respondents : Mr.Ma.P.Thangavel for R1
R2 to R5 - Served - No appearance

CMA No.2101 of 2016

For Appellant : Mr.Ma.P. Thangavel
For Respondents : Ms.I.Malar for R1
Not ready in notice reg. R2 to R5

COMMON JUDGMENT

(Heard Video Conference)

CMA No.2479 of 2015 has been filed by the Insurance Company challenging its liability to pay the compensation to the first respondent / claimant under the impugned award dated 28.01.2015 passed by the Motor Accidents Claims Tribunal, Additional District Judge, Namakkal in MCOP No.408 of 2013.

2.The claimant, who is the first respondent in CMA No.2479 of 2015 has challenged the very same impugned award seeking for enhancement of compensation in CMA No.2101 of 2016.

3. The Tribunal under the impugned award dated 28.01.2015, directed the Insurance Company to pay the claimant a compensation of Rs.1,44,500/- together with interest and costs as detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)
22% Disability compensation	44000
Medical expenses as per bills	25537
Transportation charges	5000
Nutrition	10000
Pain and suffering	25000
Loss of amenities	25000
Attender charges	10000
Total	1,44,537
Rounded off	1,44,500



4. Heard Ms.I. Malar, learned counsel for the appellant in CMA No.2479 of 2015 / 1st respondent in CMA No.2101 of 2016 and Mr.Ma.P.Thangavel, learned counsel for the 1st respondent in CMA No.2479 of 2015 / appellant in CMA No.2101 of 2016. Remaining respondents in both appeals were set ex-parte before the Tribunal, hence notice to them are dispensed with.

5. This Court has perused the materials and evidence available on record before the Tribunal.

6. The Insurance Company has challenged the award on the ground that the Tribunal has erroneously held them liable to compensate the claimant despite there being no documentary evidence to show that the accident had occurred only due to the negligent riding of the bike bearing Registration No.TN-28-AE-0790 by its rider in which the claimant Deena Dhayalan was a pillion rider. The Insurance Company has not challenged the quantum of compensation fixed by the Tribunal. With regard to the contention raised by the Insurance Company in CMA No.2479 of 2015 is concerned, the same has been duly considered by the Tribunal under the impugned award.

7. Before the Tribunal, the claimant has filed 12 documents which were marked as Exs.P1 to P12 and three witnesses were examined on his side viz., the claimant himself as PW1, the Doctor who examined him as PW2 and an eye witness to the accident as PW3. On the side of the Insurance Company, no document was filed before the Tribunal and only a witness viz., Tirumathi Vimala, the Sub Inspector of Police was examined as RW1.

8. Before the Tribunal, the case of the claimant as seen from the claim petition as well as from the oral evidence deposed by PW1 and PW3 is that on 22.05.2012 at about 6.45 p.m., when the claimant was travelling as a pillion rider in a Passion Pro motor bike bearing Registration No.TN-28-AH-7264 on the left side of the road in the East to West direction, another motor bike viz., Hero Honda Splendor plus bearing Registration No.TN-28-AE-0790 coming from the opposite direction dashed against the motor bike bearing Registration No.TN-28-AH-7264, due to the rash and negligent driving by the rider of the motor cycle bearing Registration No.TN-28-AE-0790. The motor bike bearing Registration TN-28-AE-0790 was insured with the appellant in CMA No.2479 of 2015. Even though the FIR was registered only against the motor bike in which the claimant was travelling as a pillion rider viz., the vehicle bearing Registration No.TN-28-AH-7264, the said FIR was registered not at the behest of the claimant but at the behest of the brother of the deceased Easwaramurthy, who was the rider of the vehicle bearing TN-28-AH-7264. A consistent stand has been taken by the claimant before the Tribunal that only the opposite vehicle bearing Registration No.TN-28-AE-0790 was at fault, which resulted in the accident.

9. Before the Tribunal, the brother of the deceased Easwaramurthy who lodged a complaint which is the basis of the FIR was also not examined as a witness. Even though the



Insurance Company as seen from the impugned award has alleged that a charge sheet has been filed against the de-facto complainant viz., the brother of the deceased Easwaramurthy, the rider of the motorcycle bearing Registration No.TN-28-AH-7264, the said charge sheet has also not been placed before the Tribunal. No documentary evidence has been produced by the Insurance Company before the Tribunal to prove that their vehicle bearing TN-28-AE-0790 is not at fault. However, a consistent stand has been taken by the claimant, through his oral and documentary evidence that only due to the fault of the vehicle TN-28-AE-0790 which is insured with the appellant in CMA No.2479 of 2015, the accident had happened.

10. It is settled law that a motor accident claim is decided on preponderance of probabilities. In the case on hand, as seen from the evidence available on record and based on preponderance of probability, the Tribunal has rightly come to the conclusion that the vehicle bearing Registration TN-28-AE-0790 insured with the appellant in CMA No.2479 of 2015 is solely responsible for the cause of the accident. Hence, this Court rejects the contention of the appellant in CMA No.2479 of 2015 that the rider of the vehicle, which has been insured with them is not at fault for the cause of the accident.

11. The claimant has also filed a separate appeal in CMA No.2101 of 2016 seeking for enhancement of compensation as according to him, the quantum of compensation fixed by the Tribunal is not a just compensation. The claimant has sustained the following injuries as a result of the accident.

12. The Doctor (PW2), who has treated the claimant has assessed his disability at 22%. The disability compensation fixed by the Tribunal is Rs.44,000/-, calculated at Rs.2,000/- per percentage of disability. The accident happened in the year 2012. The Tribunal has not given due consideration to the year of the accident and the nature of injuries sustained by the claimant. If the same was considered, the Tribunal ought to have granted a higher disability compensation. After giving due consideration to the nature of injuries and the year of the accident, this Court fixes the disability compensation at Rs.55,000, calculated at Rs.2,500/- per percentage of disability for the 22% disability suffered by the claimant. Accordingly, the disability compensation is enhanced to Rs.55,000/- from Rs.44,000/- fixed by the Tribunal.

13. Insofar as the compensation awarded by the Tribunal under various other heads medical expenses, transportation charges, nutrition, pain and suffering, loss of amenities and attender charges are concerned, this Court is of the considered view that it is a just compensation and does not call for any interference.



is hereby enhanced in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
22% Disability compensation *Rs.2,000/- per percentage x 22% # Rs.2,500/- per percentage x 22%	44000 *	55000 #
Medical expenses as per bills	25537	25537
Transportation charges	5000	5000
Nutrition	10000	10000
Pain and suffering	25000	25000
Loss of amenities	25000	25000
Attender charges	10000	10000
Total	1,44,537	1,55,537
Rounded off	1,44,500	1,55,500

15. In the result, the appeal filed by the Insurance Company in CMA No.2479 of 2015 is dismissed and the appeal filed by the claimant in CMA No.2101 of 2016 is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

16. The appellant in CMA No.2479 of 2015 as well as 1st respondent in CMA No.2101 of 2016 / 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 M.C.O.P. No.408 of 2013 on the file of Motor Accidents Claims Tribunal / Additional District Court at Namakkal, within a period of eight 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 1st respondent in CMA No.2479 of 2015 as well as appellant in CMA No.2101 of 2016 /claimant, through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant in CMA No.2101 of 2016 before receiving the copy of this Judgment.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



To

1. The Additional District Judge,
Motor Accident Claims Tribunal, Namakkal.

2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No. 28630

CMA Nos.2479 of 2015
and
2101 of 2016

SPD(CO)
A.SK(15.09.2021)