IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.3595 OF 2012 & 663 OF 2013

United India Insurance Co. Ltd.,
No.132, Greams Road,
Chennai - 6. ... Appellant in C.M.A.No.3595/2012 and
Respondent No.2 in C.M.A.No.663/2013

..Vs..

1. B.Karthick ... Respondent No.1 in C.M.A.No.3595/2012
Appellant in C.M.A.No.663 of 2013

2. J.Karthikeyan ... Respondent No.2 in C.M.A.No.3595/2012
Respondent No.1 in C.M.A.No.663/2013

PRAYER:- Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 1.8.2012 made in M.C.O.P.No.2050 of 2011 on the file of XV Additional Judge, Incharge 19th Additional Court, (Motor Accidents Claims Tribunal) Chennai.

Mr.D.Bhaskaran : Counsel for Appellant
in C.M.A.3595/12 and
For R2 in C.M.A.663/13

Mr.Terry Chella Raja : Counsel for R1 in C.M.A.3595/12
and For Appellant in C.M.A.663/13

Notice unserved : For R1 in C.M.A.663/13 and
For R2 in C.M.A.3595/12

COMMON JUDGMENT

Both the appeals are filed against a judgment and decree, dated 1.8.2012, made in M.C.O.P.No.2050 of 2011, by the Motor Accident Claims Tribunal, the Insurance Company has preferred C.M.A.No.3595 of 2012 challenging the award passed by the tribunal and the claimant has preferred C.M.A.No.663 of 2013 for enhancement of compensation awarded by the tribunal. Therefore, both the appeals are heard together and disposed of by a common judgment.

2. It is the case of the claimant that on 08.11.2010 at about 3.15 p.m., while he was riding a Pulzar motorcycle bearing registration No.TN-19-A-8352 at G.S.T. Road, near Maraimalai Nagar Bus stop, an autorickshaw bearing bearing registration No.TN-22 AY-2343 came from the opposite direction in a rash and negligent manner hit the aforesaid motorcycle causing accident and thereby the appellant sustained grievous injuries. The first respondent as the owner and the second respondent as insurer are jointly and severally liable to pay compensation. The appellant claimed a total compensation of Rs.6,00,000/- from the respondents.

3. In the counter affidavit filed by the second respondent Insurance company, it is stated that the driver of the autorickshaw was not holding a valid driving license to drive passenger carrying transport vehicle and badge at the time of accident as required by rule 21 of the Tamil Nadu Motor Vehicle rules 1989. It is further submitted that the claimant is not entitled for any relief as he himself contributed to the accident and hence, he cannot take advantage of his own fault and injury. As there is a breach of policy condition, the Insurance company is not liable to pay compensation.

4. The Tribunal, based on the oral and documentary evidence Exs.P1 to P.9, has awarded a compensation of Rs.2,27,500/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Amount in Rs.
Permanent Disability at 40%	1,12,500/-
Pain and suffering, Extra Nourishment & Transportation	50,000/-
Loss of Income for a period of 3 months (5000 x 3)	15,000/-
Future Prospects	50,000/-
Total	2,27,500/-

5. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the respondent/claimant and perused the materials available on record.

6. According to the learned counsel appearing for the appellant/Insurance Company, the second respondent owner of the vehicle has violated the policy conditions by allowing the

passengers without having a Badge meant for passenger vehicle and as such, the owner of the autorickshaw against which compensation claimed did not possess a valid licence to drive transport vehicle and therefore, the claimant is not entitled to any compensation from the Insurance Company. Further, the award passed by the tribunal under various heads are excessive and the claimant is not entitled to such huge compensation awarded by the tribunal.

7. Per contra, the learned counsel appearing for the claimant would submit that based on the oral and documentary evidence, the tribunal has rightly determined the compensation to the claimant. Further, it is submitted that tribunal considering the evidence of P.W.2 Dr.Saravanabavanandam who examined the claimant deposed before the Court below that he assessed disability as 40% permanent disability, awarded Rs.1,12,500/- towards permanent disability. Further, the claimant also filed appeal in C.M.A.No.663 of 2013 for enhancement of compensation.

8. The main contention of the learned counsel appearing for the appellant Insurance Company is that the owner of the vehicle had violated the policy conditions by allowing a person who had no valid driving licence to drive the vehicle involved in the accident and also the passengers were allowed in the said vehicle without having a Badge endorsed by the Motor Vehicle Inspector. In support of his contention, the learned counsel appearing for the appellant/ Insurance Company relied on the decision of the Hon'ble Supreme Court in MUKUND DEWANGAN VS. ORIENTAL INSURANCE COMPANY LTD. [(2017) 14 SCC 663] wherein the Hon'ble Supreme Court held that ''light motor vehicle'' would include a transport vehicle as per the weight prescribed in S.2 (21) r/w Ss.2(15) and 2(48) of M.V. Act, 1988. 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. Further, holder of a driving licence to drive class of ''light motor vehicle'' as provided in S.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. The Hon'ble Supreme Court interpreted Sec.10(2) (e) of the Act in the aforesaid judgment. The relevant paragraph is extracted hereunder:

> 30. The State Government has to maintain a register of motor vehicles under Rule 75 as provided in Form 41 which includes gross vehicle weight, unladen weight, etc. The Central Government has the power to frame rules under

> Section 27, inter alia, regarding minimum qualification, forms, and contents of the licences, etc. Thus, we are of the considered opinion that the definition of "light motor vehicle" under Section 2(21) of the Act includes transport vehicle of the class and weight defined therein. The transport vehicle or omnibus would be light motor vehicle, gross vehicle weight of which, and also a motor car or tractor or roadroller, unladen weight of which, does not exceed 7500 kg, and can be driven by holder of licence to drive light motor vehicle and no separate endorsement is required to drive such transport vehicle.''

9. In view of the aforesaid judgment, the learned counsel appearing for the appellant/Insurance Company has fairly submitted that the ground raised by the appellant no longer required for consideration of this Court and the said judgment is squarely apply to the facts of the present case. Therefore, no further discussion required on the ground raised by the appellant with regard to violation of policy conditions.

10. Secondly, with regard to quantum of compensation, the learned counsel appearing for the appellant/Insurance Company submitted that the tribunal erred in awarding compensation to the respondents/claimants. The tribunal without considering the nature of the disability, awarded compensation towards future prospects. According to the learned counsel appearing for the appellant/Insurance Company, no material has been placed before the tribunal to prove that the respondents/claimants suffered future earning capacity. Therefore, the finding of the tribunal under such head is liable to be set aside. In sofar as the other heads are concerned, the learned counsel appearing for the appellant/Insurance Company has fairly submitted that reasonable compensation can be fixed by this Court.

11. The learned counsel appearing for the respondents/ claimants justified the award passed by the tribunal under the head loss of future prospects. However, this Court found that there is no evidence or any material placed before the tribunal for grant of compensation towards loss of future earning capacity. Therefore, the respondent/claimant is not entitled for any compensation under loss of future earning capacity. In sofar as the other heads are concerned, the learned counsel appearing for the respondent/claimant submitted that the tribunal has not awarded any amount towards loss of amenities and attender charges and seeks enhancement of compensation for the other heads also. There is some force in the contention of the learned counsel appearing for the respondent/claimant. To that extent,

the compensation awarded by the tribunal is modified on various heads and awarded as follows:

Heads	Compensation awarded by the Tribunal Rs.	Compensation awarded by this Court (Rs.)
Disability 40% x 3000/-	1,12,500/-	1,20,000/-
Pain & suffering, Extra Nourishment & Transportation	50,000/-	20,000/- + 10,000/- + 5,000/-
Loss of Income for 4 months (5000 x 4)	15,000/-	20,000/-
Loss of Amenities	--	15,000/-
Attender charges	--	10,000/-
Loss of future prospects	50,000/-	--
Total :	2,27,500/-	2,00,000/-

12. The compensation awarded by the tribunal is reduced to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed. The appellant/Insurance company is entitled to withdraw the excess amount deposited before the tribunal, after adjusting the total compensation amount as modified by this Court along with interest at the rate of 7.5% p.a. payable to the respondent/claimant. The respondent/claimant is entitled to withdraw the amount if any, as modified by this Court by filing appropriate application, if not already withdrawn by the claimant.

13. In the result, the C.M.A.No.3595 of 2012 is partly allowed to the aforesaid extent. No costs. C.M.A.No.663 of 2013 is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The XV Additional Judge,
   (Motor Accidents Claims Tribunal),
   Chennai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.5332

CIVIL MISCELLANEOUS APPEAL NO.3595 OF 2012 & 663 OF 2013

NMI(CO)
PBS/04/08/2021