IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 26.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3682 of 2013 & M.P No.1 of 2013
and C.M. A No.996 of 2016

C.M.A No.3682 of 2013

United India Insurance Co. Ltd.,
No.134/40-42, Silingi Buildings
Greams Road, Chennai-6. ...Appellant/2nd Respondent

Vs.

1.Lakshmi ... 1st Respondent / Petitioner
2.Azeez Basha ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and award dated 18.06.2013 passed in M.C.O.P.No.5056 of 2011 by the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr. S.Arunkumar
For Respondent-1 : Mr.K.Suryanarayanan
For Respondent 2 : No Appearance

C.M.A No.996 of 2016

Lakshmi ...Appellant/Petitioner

Vs.

1.Azeez Basha
2.United India Insurance Co. Ltd.,
No.134/40-42, Silingi Buildings
Greams Road,
Chennai-6. ... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and award dated 18.06.2013 passed in M.C.O.P.No.5056 of 2011 by the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

For Appellant : Mr. K.Suryanarayanan
For Respondents : Mr.S.Arumkumar for R2
R1 - Notice unserved

WEB COPY

COMMON JUDGMENT

CMA No.3682 of 2013 has been filed by the Insurance Company challenging the finding given by the Tribunal under the impugned award that they are not liable to compensate the claim and they have also questioned the pay and recovery awarded by the Tribunal. CMA No.996 of 2016 has been filed by the claimant seeking enhancement of compensation under the impugned award.

2. The impugned award is dated 18.06.2013 passed by the Motor Accident Claims Tribunal (IV Small Causes Court, Chennai) in MCOP.No.5056 of 2011.

3. For the sake of convenience, the appellant/claimant in C.M.A No.996 of 2016 is hereinafter termed as claimant and the appellant/insurance company in C.M.A No.3682 of 2013 is hereinafter termed as respondent in the instant appeal. Both the appeals have been taken up for final disposal and a common judgment is passed in the instant appeal.

4. The case of the claimant is that on 18.09.2011 at 10.45 a.m while the claimant, as an occupant of the auto rickshaw bearing Registration No.TN-04-X-8622 came from north to sough near Muthusamy Bridge, Wallajah Rint, the driver of the same auto dashed towards another car and thereby, the petitioner sustained grievous and multiple injuries all over the body. According to the claimant, the accident was occurred only due to the rash and negligent driving of the driver of the auto rickshaw.

5. The insurance company/ second respondent has contested the claim petition by filing counter affidavit.

6. Before Tribunal, on the side of the claimant, the claimant and two other witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P5 were marked. On the side of the second respondent insurance company two witnesses were examined as RW1 and RW2 and Ex.R1 to R4 wee marked.

7. After analysing the evidence on record, he Tribunal has awarded a compensation of Rs.83,000/- to the Appellant in CMA No.996 of 2016, who was a claimant in MCOP No.5056 of 2011 as detailed hereunder:

Heads	Award Amount (Rs.)
Disability	26,000
Pain and suffering	30,000
Medical Expenses	5,000
Extra Nourishment	5,,000
Transport to Hospital	5,000

Damages to clothes	2,000
Attender charges	3,000
Loss of earning	7,000
Total	83000

8. The learned counsel for the claimant would submit that due to the accident held on 18.09.2011, the claimant suffered grievous injuries and her left toe was amputated due to the said accident. To prove the same, Ex.P4 disability certificate was marked on the side of the claimant and the doctor - Mr.Mathiazhagan, who treated the claimant was examined as PW2 and he deposed before the Tribunal that the claimant suffered permanent disability of 3% for amputation of left little toe , 10% partial disability on metatarsal bone. Based on the medical records as well as the evidence of PW2, the Tribunal has fixed Rs.2000/- per percentage for the permanent disability sustained by the claimant and awarded a sum of Rs.26,000/- for 13% disability and also awarded under other heads in granting compensation amount to the appellant/claimant. Hence, the claimant has filed the appeal in CMA No.996 of 2016 seeking for enhancement of compensation amount.

9. The learned counsel appearing for the insurance company would submit that there is a violation of terms and conditions. The Tribunal has discussed in the finding that on the side of the insurance company, Administrative Officer, who was examined as RW1 deposed that F.C was valid up to 02.09.2011. Therefore, on the date of accident, Auto Rickshaw was not having valid F.C and thereby, the second respondent has violated the terms and conditions. Hence the insurance company has filed the appeal in CMA No.3682 of 2013 questioning the liability as fixed by the Tribunal.

10. The owner of the vehicle was exparte before the Tribunal and in the instant appeals, eventhough notice was served, none appeared for him.

11. Heard the learned counsel appearing on either side and perused the materials on record.

CMA No.996 of 2016:

12. The claimant sustained grievous injuries all over her body due to the accident and to prove the same, Ex.P3- discharge summary, Ex.P4-disability certificate issued by PW2 and Ex.P5- X-ray film were marked on the side of the claimant. In support of the said documents, Dr.Mathiazhagan was examined as PW2 and he deposed before the Tribunal that the claimant has suffered 13% disability in the said accident and 3% for amputation in the little toe, 10% metatarsal bone. By fixing Rs.2000/- per percentage, the Tribunal has awarded Rs.26,000/- for permanent disability. In the light of the decision of the

division bench of this Court, where a reasonable compensation should be paid between Rs.2,000/- to Rs.5000/- for the injuries sustained by the claimant and depends upon the facts of the case. Accordingly, this Court is of the view that the claimant is entitled for Rs.3,000/- per percentage and as far as the other heads are concerned, the Tribunal has rightly awarded the compensation amount to the claimants. Therefore, no additional compensation amount shall be granted to the claimant except for the loss of amenities. Considering the aforesaid discussions, and taking note of the grievous injuries sustained by the claimant, it is appropriate for this Court to revise the compensation amount and the award passed by the Tribunal is modified as follows:

Sl No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/Awarded by this court
1	Disability	26,000	39,000 (3000 x 13)
2	Pain & Suffering	30,000	30,000
3	Medical Expenses	5,000	5,000
4	Extra Nourishment	5,000	5,000
5	Transport charges	5,000	5,000
6	Damages to clothes	2,000	2,000
7	Attender Charges	3,000	3,000
8	Loss of earning	7,000	7,000
9	Loss of amenities	--	5,000
	Total	83,000	1,01,000

Accordingly, the claimant is entitled to a compensation of Rs.1,01,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The respondent/Insurance Company shall deposit the revised compensation amount less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of the judgment. On such deposit, the claimant is entitled to withdraw the same by filing an appropriate application.

13. The learned counsel for the respondent insurance company submitted that there is a violation of condition as clearly discussed by the Tribunal in the award. But, the Tribunal has wrongly fixed the liability as against the insurance company. Based on the evidence of RW1, the Tribunal observed that the second respondent is the owner of the vehicle and he has violated the policy conditions. But, the Tribunal has directed the respondent to pay the compensation amount to the claimant. Aggrieved over the same, the respondent insurance company has filed the appeal in CMA No.3682 of 2013 alleging that there is a violation in the terms and conditions. In the decision of the Division Bench of this Court in the case of Bharati AXA General Insurance Co. Ltd., v. Aandi and two others reported in 2018(2) TN MAC 731, it has been held that if there is violation then, the Court can pass appropriate orders by insisting the insurance company to pay the amount to the claimant and the same can be recovered from the owner of the vehicle. As per the contention of the respondent insurance company, the compensation amount awarded by the Tribunal has to be paid by the respondent insurance company at the first instance and thereafter, the respondent insurance company shall recover the same from the owner of the vehicle, on filing appropriate application before the Tribunal, in the manner known to law.

14. In view of the aforesaid reasons, the appeal filed by the claimant in CMA No.996 of 2016 is partly allowed by enhancing the compensation amount. The appeal filed by the respondent insurance company in CMA No.3682 of 2013 is also partly allowed as far as the pay and recovery is concerned. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

uma

To

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

Copy to:
The Section Officer,
VR Section,High Court,Madras

+1 cc to Mr.K.Suryanarayanan, Advocate Sr.NO. 19770

+1 cc to Mr.S.Arunkumar, Advocate Sr.NO. 119973

CMA. Nos.3682 of 2013 &
MP No.1 of 2013 & 996 of 2016

SSD(CO)
A.SK(12.11.2021)