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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.03.2021

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.Nos.135, 136, 137 of 2018
& C.M.A.Nos.514 to 516 of 2018
& C.M.P.Nos.4518 to 4520 of 2018

C.M.A.No.135 of 2018:

M.Sathya ... Appellant/Petitioner
in C.M.A.No.135 of 2018

/versus/

1. A.Dharani,
(Remained ex-parte before trial Court)

2. United India Insurance Company Limited,
Motor Third Party Hub, 4th Floor,
Silinghi Buildings, 134, Greaves Road,
Thousand Lights,
Chennai - 600 006.

... Respondents /Respondents
in C.M.A.No.135 of 2018

Prayer in C.M.A.No.135 of 2018: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 14.09.2013 made in M.A.C.T.O.P.No.7932 of 2013, on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

C.M.A.No.136 of 2018:

K. Malar ... Appellant/Petitioner
in C.M.A.No.136 of 2018

/versus/

1. A.Dharani,
(Remained ex-parte before trial Court)



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2. United India Insurance Company Limited,
Motor Third Party Hubb, 4th Floor,
Silinghi Buildings, 134, Greams Road,
Thousand Lights,
Chennai - 600 006.

... Respondents/Respondents
in C.M.A.No.136 of 2018

Prayer in C.M.A.No.136 of 2018: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 14.09.2013 made inn M.A.C.T.O.P.No.7939 of 2013, on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

C.M.A.No.137 of 2018:

Kaja

... Appellant/Petitioner
in C.M.A.No.137 of 2018

/versus/

1. A.Dharani,
(Remained ex-parte before trial Court)

2. United India Insurance Company Limited,
Motor Third Party Hubb, 4th Floor,
Silinghi Buildings, 134, Greams Road,
Thousand Lights,
Chennai - 600 006.

... Respondents/Respondents
in C.M.A.No.137 of 2018

Prayer in C.M.A.No.137 of 2018: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 14.09.2013 made inn M.A.C.T.O.P.No.7940 of 2013, on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

C.M.A.No.514 of 2018:

United India Insurance Company Limited,
Motor Third Party Hubb, 4th Floor,
Silinghi Buildings, 134, Greams Road,
Thousand Lights,
Chennai - 600 006.

... Appellant in C.M.A.No.514 of 2018



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/versus/

1. M.Sathya,
2. A.Dharani,

... Respondents in C.M.A.No.514 of 2018

Prayer in C.M.A.No.514 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in O.P.No.7932 of 2013 dated 14.09.2017 passed by the II Small Causes Judge, Motor Accidents Claims Tribunal, Chennai.

C.M.A.No.515 of 2018:

United India Insurance Company Limited,
Motor Third Party Hubb, 4th Floor,
Silinghi Buildings, 134, Greams Road,
Thousand Lights,
Chennai - 600 006.

... Appellant/IInd Respondent
in C.M.A.No.515 of 2018

/versus/

1. K.Malar
2. A.Dharani,

... Respondents in C.M.A.No.515 of 2018

Prayer in C.M.A.No.515 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in O.P.No.7939 of 2013 dated 14.09.2017 passed by the II Small Causes Judge, Motor Accidents Claims Tribunal, Chennai.

C.M.A.No.516 of 2018:

United India Insurance Company Limited,
Motor Third Party Hubb, 4th Floor,
Silinghi Buildings, 134, Greams Road,
Thousand Lights,
Chennai - 600 006.

... Appellant/IInd Respondent
in C.M.A.No.516 of 2018

/versus/

1. Kaja
2.A.Dharani,

... Respondents/IInd Respondent
in C.M.A.No.516 of 2018



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Prayer in C.M.A.No.516 of 2018:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in O.P.No.7940 of 2013 dated 14.09.2017 passed by the II Small Causes Judge, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.R.Kalaiarasan
in C.M.A.Nos.135,
136 & 137 of 2018

For R1 : exparte
in C.M.A.Nos.135,
136 & 137 of 2018

For R2 : Ms.R.Rathna Thara
in C.M.A.Nos.135,
136 & 137 of 2018

For Appellant : Ms.R.Rathna Thara
in C.M.A.No.514 of 2018

For R1 : Mr.R.Kalaiarasan
in C.M.A.No.514 of 2018

For R2 : exparte
in C.M.A.No.514 of 2018

For Appellant : Ms.R.Rathna Thara
in C.M.A.Nos.515
& 516 of 2018

For R1 : No appearance
in C.M.A.Nos.515 &
516 of 2018

For R2 : exparte
in C.M.A.Nos.515 &
516 of 2018

COMMON JUDGMENT

These Appeals are arising out of the common judgment and decree passed by the Motor Accident Claims Tribunal, Chennai.



2. The facts of the case is that, on 03.09.2013, at about 19.00 hours, a car bearing registration No.TN-22-CZ-4506, rash and negligently driven by his driver, lost its control and run over the pedestrians walking along Mudichur Road near Lakshmi Nagar, 1st Street. In the said accident, M.Sathya, K.Malar and Kaja sustained injury. They were admitted in the hospital and treated for the injury. Separate claim petitions were filed by these three injured persons against the owner of the car A.Dharani and his insurer.

3. The Tribunal, after considering the evidence placed before it, had awarded a sum of Rs.86,000/- to M.Sathya, who is the petitioner in M.C.O.P.No.7932 of 2013 as against her claim of Rs.8,00,000/-. Awarded a sum of Rs.20,000/- to K.Malar, who is the petitioner in M.C.O.P.No.7939 of 2013 as against her claim of Rs.3,00,000/- Awarded a sum of Rs.20,000/- to Kaja, who is the petitioner in M.C.O.P.No.7940 of 2013 as against his claim of Rs.3,00,000/-.

4. Aggrieved by the quantum of compensation and liability, the Insurance Company has preferred appeal in C.M.A.No.514 of 2018 against the award passed in M.C.O.P.No.7932 of 2013, whereas, the claimant/M.Sathya, not been satisfied with the compensation, for the enhancement of compensation has preferred the appeal in C.M.A.No.514 of 2018. Likewise, against M.C.O.P.No.7939 of 2013 filed by K.Malar, the Insurance Company has preferred Appeal in C.M.A.No.136 of 2018, challenging the quantum and liability. The claimant has filed C.M.A.No.515 of 2018 for enhancement of compensation. Likewise, in claim petition filed by Kaja, the Insurance Company has preferred appeal in C.M.A.No.516 of 2018 challenging the quantum and liability. The claimant has filed C.M.A.No.137 of 2018 for enhancement of compensation.

Liability

5. As far as the liability fastened on the Insurance Company is concerned, in the appeal, it is contended that, the driver of the offending car had no driving licence and same has been proved in the trial. Since there is a fundamental breach of statute as well as the terms of contract, the Insurance Company is not liable to indemnify the vehicle owner. The evidence placed before the Court not been properly considered by the Tribunal though the tribunal while framing point for consideration, had framed one of the point, as who is liable to pay compensation.



6. From the evidence of R.W.1 Regional Transport Officer, it has been established that, the driver of the offending vehicle Mr.Amarnath had only Learner's Licence, on the date of accident. The Tribunal has concluded that there is no violation of Rule 3 of the Central Motor Vehicle Rules, 1989 and therefore, negated the plea of Insurance Company which prayed for pay and recovery. The said conclusion of the Tribunal is legally incorrect.

7. Chapter - II, Rule 3 of Central Motor Vehicle Rule, 1989, which deals with Licensing of Drivers of Motor Vehicle, who are learners. As per this Rule, the necessity for driving licence as contemplated Section 3 of Motor Vehicle Act, will not apply to a learner. Provided, he must be accompanied by an instructor holding an effective driving License to drive the vehicle and such instructor is sitting in such a position to control or stop the vehicle and there must be painting of the Letter "L" in red on a white background, in the front and the rear of the vehicle on a plate or a card affixed.

8. Reading of Rule 3 of the Motor Vehicles Act, which mandates, possession of a Driving License along with General Rule for learners clearly show that a person who possess only learner licence cannot driver a vehicle alone without being accompanied by a person who possess a valid driving licence and accompanying driver sit in a position to control the vehicle. In this case, there is no evidence to show that the driver of the offending vehicle was accompanied by a person possessing valid driving licence. Therefore, the conclusion of the Tribunal that, there is no violation of Rule 3 of Central Motor Vehicle Rules, is factually incorrect. Hence, the Insurance Company taking recourse to the principle of "pay" and "recover" is justifiable and to be allowed.

9. The Appellant/Insurance Company in C.M.A.Nos.514, 515 and 516 of 2018 is entitled to recovery the award amount from the vehicle owner, after satisfying the claimants.

Quantum:

10. As far as the quantum is concerned, M.Sathya, who is the petitioner in M.C.O.P.No.7932 of 2013, the appellant in C.M.A.No.135 of 2018 and 1st respondent in C.M.A.No.514 of 2018 was awarded a sum of Rs.86,000/- as compensation. The doctor, who has assessed the disability has given a disability certificate that she has incurred 50% partial permanent disability. The nature of injury sustained by her is fracture



of both bone left lower forearm, injury at right occipito parietal region, right temporal region aberration over right eyebrow.

11. The Tribunal, taking note of the guidelines prepared by American Academy of Orthopedic Surgeons and the fact that, the claimant suffers mal-united fracture which can be cured by way of physiotherapy, has fixed the disability at 17% and had awarded a sum of Rs.51,000/- for the said disability besides other compensation under non-conventional heads.

12. The Learned Counsel appearing for the appellant would submit that the claimants was earning around Rs.16,500/- per month as a designer and due to the accident injury, she has not only lost the income during the treatment period but her earning capacity had permanently reduced, due to fracture of both bone on left lower forearm.

13. As far as the claim made by M.Sathya, to substantiate her claim, medical bills, discharge summary, salary certificate and reliving letter are marked as exhibits. But the author of the salary certificate or the reliving letter not been examined and therefore, the Tribunal has not given much evidentiary value for these two documents. In the opinion of this Court, it is right on the part of the Tribunal to ignore these two documents. However, taking note of the fact that there was fracture of both bone in left lower forearm, 17% disability appears to be less. As pointed out by the Tribunal, the American Journal has assessed such disability to 22% and we find that, apart from fracture of left lower forearm, there are other injuries also sustained by the claimant. Hence, this Court fixed the disability at 30% instead of 17%. Regarding other non-conventional heads, this Court finds no error in the award passed by the Tribunal. Accordingly, the Appeal filed by M.Sathya in C.M.A.No.135 of 2018 is Partly Allowed as far as quantum of compensation is concerned, the award of the Tribunal is enhanced from Rs.86,000/- to Rs.1,25,000/-. The Appeal filed by the Insurance Company in C.M.A.No.514 of 2018 is also partly allowed insofar as the liability is concerned by ordering pay and recovery. The Insurance Company is directed to pay a sum of Rs.1,25,000/- along with 7.5% interest, within a period of 8 weeks, from the date of petition till the date of realisation. On such deposit, the claimant is permitted to withdraw the award amount. The Insurance Company is permitted to recover the award amount from the vehicle owner A.Dharani, as per the dictum laid down in Nanjappa -vs- State of Karnataka.



C.M.A.No.136 of 2018:

14. Regarding the Appeal in respect of the claim petition made in M.C.O.P.No.7939 of 2013 by K.Malar, this Court finds that because of the there was a oil spill over her and the Doctor has certified 15% disability. The Tribunal has awarded a consolidated sum of Rs.20,000/- taking note of the fact that, the injury caused is only simple injury. In support of the claim, the claimant has filed A.R copy marked as Ex.P.9. There is no indication in the A.R copy (Ex.P.9) that the petitioner was injured grievously or being hospitalised for the said accident. For mental agony, pain and sufferings, medical and travel expenses, the Tribunal has awarded consolidate sum of Rs.20,000/-.

15. This Court, on considering the A.R copy (Ex.P.9) and out patient slip (Ex.P.10), relied by the claimant conclude that there is no serious injury which need compensation more than Rs.20,000/- therefore, the award passed by the Tribunal regarding compensation payable to the claimant K.Malar is confirmed and her Appeal filed for enhancement of compensation is dismissed.

16. The Appeal by the Insurance Company in C.M.A.No.515 of 2018 is partly allowed. Giving liberty to the Insurance Company to recovery the said amount from the owner of the vehicle.

C.M.A.No.137 of 2018:

17. Regarding the Appeal in respect of the claim petition made in M.C.O.P.No.7940 of 2013 by Kaja, this Court finds that because of the accident, there was a oil spill over her, and the Doctor has certified 15% disability. The Tribunal has awarded a consolidated sum of Rs.20,000/-. Taking note of the fact that, the injury caused is only simple injury. In support of the claim, the claimant has filed A.R copy (Ex.P.11). There is no indication in the A.R copy (Ex.P.11) that the petitioner was injured grievously or being hospitalised for the said accident. For mental agony, pain and sufferings, medical and travel expenses, the Tribunal has awarded consolidate sum of Rs.20,000/-.

18. This Court, on considering the A.R copy Ex.P.11 and out patient slip (Ex.P.12), relied by the claimant hold that there is no serious injury which needs compensation of more than



Rs.20,000/- therefore, the award passed by the Tribunal regarding compensation payable to the claimant Kaja is confirmed and his appeal filed for enhancement of compensation is dismissed.

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19. The Appeal filed by the Insurance Company in C.M.A.No.516 of 2018 is partly allowed. Liberty to pay & liberty granted to petitioner/Insurance Company.

20. As a result, the Civil Miscellaneous Appeal No.135 of 2018 filed for enhancement of compensation is Partly Allowed. C.M.A.Nos.514 of 2018, 515 of 2018 and 516 of 2017 are Partly allowed. The appellants are given liberty to pay the claimant and recovery from the insured/vehicle owner. C.M.A.No.136 of 2018 and C.M.A.No.137 of 2018 filed for enhancement of compensation are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

bsm
To:-

1.The Judge,
II Small Causes Court
(Motor Accidents Claims Tribunal),
Chennai.

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

+1cc to Mr.N.M.Muthurajan, Advocate SR.15025

C.M.A.Nos.135,136, 137 of 2018
& C.M.A.Nos.514 to 516 of 2018
& C.M.P.Nos.4518 to 4520 of 2018

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