



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NOS.92 AND 94 OF 2014

M.Eswaran

...Appellant/Claimant in CMA No.92 of 2014

Rukmani

...Appellant/Claimant in CMA No.94 of 2014

Versus

1. N. Pannerselvam

...I Respondent/I Respondent

2. M/s. United India Insurance Company

Bank Road,

Ootacamand

Nilgiris.

...II Respondent/II Respondent

Prayer in CMA No.92 of 2014 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2011 and made in MCOP No.113 of 2006 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), at Mettur and praying to set aside the same by enhancing the compensation as prayed for.

Prayer in CMA No.94 of 2014 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2011 and made in MCOP No.115 of 2006 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), at Mettur and praying to set aside the same by enhancing the compensation as prayed for.

For Appellant : Mr.P.Jagadeesan

For Respondents : Ms.I.Malar for R2

R1 – Served – No appearance



COMMON JUDGMENT

(Heard video conference)

WEB COPY

Since both these appeals arise out of the same accident, these appeals are disposed of by a common judgment.

2. C.M.A. Nos.92 and 94 of 2014 have been filed by the respective claimants challenging the impugned awards dated 29.09.2011 in respective MCOP Nos.113 and 115 of 2006 passed by the learned Sub Judge, Motor Accident Claims Tribunal, Mettur on the following grounds :

a) The Tribunal has erroneously exonerated the 2nd respondent / Insurance Company under the impugned awards.

b) the quantum of compensation awarded by the Tribunal in respective MCOPs are not a just compensation.

3. Heard Mr.P. Jagadeesan, learned counsel for the respective appellant / claimant and Ms.I.Malar, learned counsel for the 2nd respondent / Insurance Company in both these appeals. The 1st respondent was set ex-parte before the Tribunal, hence notice to R1 is dispensed with.

4. This Court has perused and examined the impugned award as well as the materials and evidence available on record before the Tribunal.

5. Insofar as the first contention raised by the respective appellants is concerned, this Court is of the considered view that the Tribunal has rightly exonerated the liability of the Insurance Company as admittedly as seen from the evidence available on record, the respective appellants / claimants were travelling as an unauthorised passenger in the insured goods vehicle. It is settled law that as gratuitous passengers, no claim can be made against the Insurance Company. Therefore, the first contention as regards the exoneration of the liability of the Insurance Company raised by the respective appellants is rejected by this Court.



6. Insofar as the second contention raised by the respective appellants as regards the quantum of compensation awarded by the Tribunal in respective MCOPs are concerned, the same also does not deserve any merit for the following reasons :-

i) Insofar as the claimant, who is the appellant in CMA No.92 of 2014, she has not sustained any disability as seen from the evidence available on record. The Tribunal has awarded a compensation of Rs.13,000/- for an accident that happened on 26.12.2000. Since the appellant / claimant in CMA No.92 of 2014 has not sustained any disability, this Court is of the considered view that the Tribunal has rightly assessed the compensation payable to the appellant / claimant at Rs.13,000/- and the same is confirmed.

ii) Insofar as the compensation awarded by the Tribunal to the appellant / claimant in CMA No.94 of 2014 is concerned, even though the Doctor (PW5), who assessed the disability of the appellant / claimant at 35%, the Tribunal has reduced the same to 30% after giving due consideration to the nature of injuries sustained by the appellant / claimant. This Court is of the considered view that the assessment of compensation under the head "permanent disability" made by the Tribunal at Rs.30,000/- is a correct assessment. The accident happened in the year 2000 after giving due consideration to the year of the accident, this Court is of the considered view that the overall compensation awarded by the Tribunal to the appellant / claimant at Rs.62,500/- cannot be considered to be unjust and the same is confirmed.

7. For the foregoing reasons this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in these appeals and accordingly, the Civil Miscellaneous Appeals are dismissed. No costs.



8. The Tribunal has awarded the compensation only against the 1st respondent and the 1st respondent has also not preferred any appeal aggrieved by the finding of the Tribunal. The award passed against the first respondent is confirmed and the first respondent is directed to deposit the entire award amount awarded by the Tribunal 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 respective MCOP Nos.113 and 115 of 2006 on the file of Motor Accident Claims Tribunal, (Subordinate Judge), at Mettur respectively, within a period of four 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 appellant in CMA No.92 and 94 of 2014 through RTGS, within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

vsi2

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Mettur.
2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai - 104.

+2ccs to Mr.P.Jagadeesan, Advocate, S.R.No.49403 & 49405

C.M.A.Nos.92 and 94 of 2014

MG(CO)
RLP(08/11/2021)