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CMA.75 and 76 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.04.2022

PRONOUNCED ON : 07.06.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

CMA.Nos.75 and 76 of 2012

Vadivel

..Appellant in CMA.75/2012

Rajakhannu

..Appellant in CMA.76/2012

Vs

1.Kamaraj

2.Divisional Manager,

United India Insurance Co.Limited

No.46, Katpadi Road, Vellore

..Respondents.

In both appeals.

PRAYER : CMAs filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.A.C.T.O.P.Nao.163 and 164 of 2009 on the file of Motor Accident Claims tribunal, dated 19.8.2011.

For Appellants : Mr.J.F.Terry Chellar Raja for M/s.M.Malar

For Respondents : Mr.I.Malar for R2.



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JUDGMENT

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The above appeals are filed by the claimants for enhancement of the compensation awarded by Chief Judicial Magistrate, [MACT] Tiruvannamalai, (for short, "the Tribunal") vide award dated 19.08.2011 passed in M.A.C.T.O.P.Nos.163/2009 and 164/2009.

2. The appellants/claimants, are the driver and pillion rider and they sustained injuries in the accident that occurred on 08.05.2009. According to the appellants, on 08.05.2009 when they were returning from Tiruvannamalai to their house in two wheeler bearing Reg.No.TN 22.BX.5260, a two wheeler bearing Reg.No.TN 25 K 1397 owned by 1st respondent and insured with 2nd respondent, came from opposite direction in a rash and negligent manner and hit the appellants vehicle, thereby both sustained injuries and they claimed compensation of Rs. 5,000/- (MCOP.163/2009) and Rs.5,00,000/- (MCOP.No.164/2009) respectively.

3. The Tribunal on a scrutiny of the entire evidence led before it held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle viz., Two wheeler bearing registration No. TN 25 K



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1397. The tribunal also found that even though the 1st respondent's vehicle was insured with the 2nd respondent-Insurance Company, since on the date of accident, the rider of the two wheeler was not having valid driving licence, which resulted in violation of policy conditions, the 2nd respondent-Insurance company is not liable to pay the compensation and it is only the 1st respondent owner of the vehicle to pay the compensation.

4. The Tribunal having gone into entire evidence both oral and documentary, found that claimant in MCOP.No.163/2004 sustained only simple injuries and so, awarded Rs.8,000/- as compensation. In M.C.O.P.No.164/2004, the claimant was found to be sustained two grievous injuries and 2 simple injuries and also sustained 40% disability, therefore, awarded Rs.55,000/- as compensation.

5. Now, the appellants/claimants have filed the present appeals seeking enhancement of compensation and also seeking a direction to modify the award as pay and recovery since the insurance company failed to take necessary steps to show that there was no valid driving licence for the rider of the vehicle.



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6. During the course of arguments, this court specifically raised a question as to whether the offending vehicle was insured at the relevant point of time. To the said question, the learned counsel for the 2nd respondent-Insurance company answered that the insurance policy of the offending vehicle is not disputed but only the driver of the vehicle did not have the valid driving licence and inasmuch as there is violation of policy condition, the insurance company is exonerated from the liability and pleaded that the said finding shall be confirmed.

7. The learned counsel for the 2nd respondent relied on the decision in the case of Oriental Insurance Co. Ltd., Pondicherry Vs. Anbu Thiagarajan and another [2009 (2) TNMAC 364] and submitted that when the driver of the vehicle did not possess any type of license on the date of accident, the insurance company cannot be fastened with the liability to pay compensation to the claimant and owner has to satisfy the award.

8. I have heard the learned counsel appearing for either side and perused the records carefully. In the case of third party risks, as per the decision in *National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297*, the insurer had to indemnify the compensation amount



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payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured.

9. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

10. When the insurance coverage of the vehicle is not disputed, the impugned judgment/Award passed by the Tribunal, exonerating the insurance company from its liability is liable to be set aside.



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11. So far as the compensation amount awarded by the Tribunal to the appellant in CMA.No.75 of 2012 (MCOP.No.163/2009) is concerned, for the simple injuries sustained, Rs.4,000/- under the head "Medical and Transport expenses", Rs.4,000/- under the head "Pain and suffering", altogether, Rs.8000/- has been awarded as compensation. The said compensation needs no cause of alteration. Hence, the award passed in MCOP.No.163/2009 is confirmed.

12. In respect of compensation granted to appellant in CMA.No.76 of 2012 (MCOP.No.164/2009) is concerned, under the head "Medical, transport, attendant expenses-Rs.25,000/-; under the head "permanent disability" Rs.20,000/-; under the head "Pain and Suffering"-Rs.10,000/- is awarded as compensation.

13. This court gone through the entire narration of injury and the disability suffered by the injured. The doctor who assessed the permanent disability of the injured, given disability certificate assessing 40% disability. But the Tribunal, reduced the said assessment and taken only 20% disability, therefore, awarded Rs.20,000/- giving Rs.1000/- compensation per percentage of disability.



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14. As per the doctor's opinion, due to 4th and 5th bone fracture and malunion of such bones in the right hand, right foot injury, fracture of thumb finger in right foot, lesser and restricted movements in right hand fist, he cannot hold the things properly and therefore, assessed 40% permanent disability. The injured appellant being a farmer, cannot continue his farming activity as before, with 40% disability on his right hand. In the opinion of the court, the permanent disability to the extent of 40% resulted in severe income earning impairment upon the appellant. Full functioning of his hands is essential to his livelihood. The extent of his permanent disablement was assessed at 40%; however, the Tribunal halved it to 20% on an entirely wrong application, which was illogical and is unsupportable in law. What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. Therefore, this court is inclined to modify the compensation as below:-

Permanent disability 40%

x 2000/- per percentage of disability : 80,000/-

Pain and suffering : 1,00,000/-

Medical and allied expenses : 20,000/-

Total compensation : Rs.2,00,000/-.



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15. In the result,

(i) Appeals are partly allowed.

(ii) Appeal for enhancement of compensation prayed in CMA.No.75 of 2012, is dismissed.

(iii) In CMA.No.76 of 2012, the compensation is enhanced from Rs.55,000/- to Rs.2,00,000/- with interest at the rate of 7.5% percentage per annum from the date of petition till the date of realisation.

(iv) Insofar as direction of the impugned judgment absolving the liability of the 2nd respondent insurance company is set aside.

(v) The second respondent insurance company shall pay the compensation to the appellants/claimants along with the accrued interest and the insurance company shall recover the same from the owner of the vehicle as held in the decision *in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224*. No costs.

07.06.2022

Index :Yes/No

Internet :Yes/No

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To

1. The Motor Accidents claims Tribunal,
Chief Judicial Magistrate, Tiruvannamalai.

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



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J.NISHA BANU, J.

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