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C.M.A. Nos.1599 and 1600 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. Nos.1599 and 1600 of 2018 and
C.M.P. Nos.12758 and 12759 of 2018

M/s.Iffco Tokio General Insurance
Company Limited
No.8, Old No.195, 1st and 2nd Floor,
North Usman Road, Chennai - 600 017

... Appellant in both CMAs

Vs.

K.Gowsalya (Minor)
(Rep. by her Mother & NF K.Mathi)

... 1st Respondent in CMA No.1599/2018

K.Mathi

... 1st Respondent in CMA No.1600/2018

A.Kaliyappan

... 2nd respondent in both CMAs

Common Prayer: This Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in MCOP Nos.630 and 631 of 2013, dated 21.12.2015 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate's Court), Cuddalore.

In Both CMAs

For Appellant : Mr.J.Michael Visuvasam
For Respondents : M/s.Ramya V.Rao for R1
R2 - No Appearance



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This Civil Miscellaneous Appeals are filed against the judgment and decree in MCOP Nos.630 and 631 of 2013, dated 21.12.2015, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate's Court), Cuddalore.

2. In both the CMAs, the 1st respondents are claimants. The 2nd respondent is the owner of the offending vehicle. The appellant is the insurer of the offending vehicle.

3. The case of the claimants is that on 18.03.2012 at about 7.00 p.m, while both the claimants were travelling a pillion riders in the 2nd respondent's moped bearing Regn. No.PY-01-BJ-4322 at ECR Road, Manjangkuppam, the moped colluded with another motor cycle and resulted in the accident. Due to the accident, both the claimants were thrown out of the moped and sustained grievous injuries and multiple fractures all over the body and head. Immediately, they were admitted in the Government Headquarters Hospital, Cuddalore, for treatment. Subsequently, they took treatment in a private hospital.



4. The claimants who are daughter and mother filed claim petitions in MCOP Nos.630 and 631 of 2013 before the Motor Accidents Claims Tribunal (Chief Judicial Magistrate's Court), Cuddalore, claiming compensation of Rs.5,00,000/- and Rs.10,00,00/- respectively. The claimant in MCOP No.630 of 2013 namely K.Gowsalya rep. by her mother K.Mathi stated in her petition that at the time of accident, she was aged 10 years and was studying in school. She stood first in her studies, sports and extra curricular activities and due to the accident, she became a permanent disabled girl and not able to perform as she was. The Claimant in MCOP No.631 of 2018 stated in her petition that at the time of accident, she was aged 30 years and was earning Rs.3,300/- per moth as cloth and garment merchant. She was the only breadwinner of her family and due to the accident, she became a permanent disabled lady and not able to work and earn as she was and the entire family was suffering for their livelihood.

5. In order to substantiate the claim before the Tribunal, on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 15 documents were marked as Ex.P.15. On the side of the respondents, no oral and documentary evidence was let in.



6. Before the Tribunal, the 1st respondent/2nd respondent herein, remained ex-parte.

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7. The Tribunal, after hearing the submissions of the learned counsel on either side and considering the materials, awarded compensation of Rs.4,00,000/- to the minor claimant in MCOP No.630 of 2013 and awarded compensation of Rs.2,26,130/- to the claimant in MCOP No.631 of 2013 by Award date 21.12.2015 with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and directed the appellant/Insurance Company to pay the compensation with liberty to recover the same from the 2nd respondent herein/owner of the offending vehicle since he had violated the permit.

8. Challenging the said Award, the Insurance Company has filed the present appeals.

9. The learned counsel for the appellant/Insurance Company submitted that as per Rules, in a two wheeler, only one pillion rider is permitted to travel along with the rider whereas, in this case, the 2nd respondent herein has ridden the two wheeler along with his wife and



daughter. Since the 2nd respondent is the tort-feasor to the accident and had violated the permit, the appellant/Insurance Company is not liable to pay any compensation.

10. The learned counsel for the claimants/1st respondents in both the appeals submitted that at the time of accident, the two wheeler of the 2nd respondent was insured with the appellant/Insurance Company. Therefore, as an insurer, the appellant/Insurance Company is liable to pay the compensation. Therefore, there is no merit in the appeal and the same are liable to be dismissed.

11. Heard both sides and perused the materials available on record.

12. Admittedly, as per rules only one person is permitted to travel as a pillion rider in a two wheeler. But, in this case, the 2nd respondent has ridden the two wheeler with 2 pillion riders namely his wife and minor daughter. Admittedly, both the pillion riders have sustained injuries in the accident and both of them have filed separate claim petitions before the Tribunal and the Tribunal has also awarded separate compensation to both of



them. Since the 2nd respondent is the tort-feasor to the accident and since the 2nd respondent had violated the permit, the 2nd respondent is liable to pay the compensation. However, since the two wheeler was insured with the appellant/Insurance Company at the time of accident and since the claimants are 3rd parties, the Tribunal directed the appellant/Insurance Company to pay the compensation at the first instance and then to recover the same from the 2nd respondent herein, whereas, as per policy condition, as an insurer, the appellant/Insurance Company is liable to pay compensation to only one pillion rider. Therefore, one of the claim petitions is liable to be set aside.

13. Accordingly, the appeal filed by the Insurance Company in CMA No.1599 of 2018 is allowed and the award passed in M.C.O.P.No.630 of 2013 dated 21.12.2015 is hereby set aside. No costs.

14. As far as the appeal in CMA No.1600 of 2018 is concerned, the discharge summary/Ex.P8 issued by the PIMS Hospital, Pondicherry, shows that the claimant had undergone treatment from in the said hospital from 18.03.2012 to 27.03.2012 for 10 days. Ex.P.7/wound certificate shows that she sustained fracture of proximal tibia right and RT fibula fracture right zygoma in right leg and the said injuries are grievous in nature. The doctor/



P.W.2 who examined the claimant after taking X-ray/Ex.P.11, has assessed the percentage of disability at 45%. The Dentist who was examined P.W.3, after taking X-ray/Ex.P12, has categorically deposed that the claimant suffered fracture of the right zygome and assessed the percentage of disability at 30% permanent disability. As per the claim petition, the claimant was aged 30 years and she was working as a cloth merchant and was earning Rs.3,300/- per month. However, there is no proof to show the income of the claimant. Based on the medical report and X-rays, the doctors have assessed the disability of the claimant at 45% and 30% respectively (75% in total) and the disability certificates/Ex.P14 and Ex.P12 prove the same. Though the Tribunal by considering the age factor, nature of injuries, nature of occupation, fixed Rs.3,300/- as the monthly income of the claimant and by adopting multiplier method awarded compensation Rs.1,68,300/- towards loss of earning capacity, while converting the disability to the whole body, the Tribunal reduced the disability to 25% without giving any reason. Even assuming that she was a house wife, it cannot be stated that house wives are doing less work. Therefore, considering the facts and circumstance and the nature of injuries sustained by the claimant, this Court fix the disability at 50% instead of 25%.



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15. Further, the Award passed towards "Pain and Sufferings" is enhanced to from Rs.27,500 to Rs.50,000/-.

16. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Loss of earning capacity	Rs.1,68,300/- (Rs.3,300x12x17x25/100)	Rs.3,36,600/- (Rs.3,300x12x17x50/100)	Enhanced
2.	Loss of income (2 months)	Rs.6,600/-	Rs.6,600/-	Confirmed
3.	Pain and Sufferings	Rs.27,500/-	Rs.50,000/-	Enhanced
4.	Medical Expenses	Rs.23,730/-	Rs.23,730/-	Confirmed
	Total	Rs.2,26,130/-	Rs.4,16,930/-	Enhanced

17. The award of the Tribunal is modified by enhancing the compensation amount from Rs.2,26,130/- to Rs.4,16,930/- which according to this Court is a 'just compensation'.

18. The appellant/Insurance Company is directed to deposit the



enhanced award amount of Rs.4,16,930/- to the credit of MCOP No.631 of 2013, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate's Court), Cuddalore, with interest at 7.5% per annum from the date of petition (21.12.2012) till the date of deposit, with cost as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment. The appellant/ Insurance Company is at liberty to recover the compensation amount from the 2nd respondent herein who is the owner of the offending vehicle.

19. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

20. The claimant in M.C.O.P.No.631 of 2013 is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.



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21. In the result, this Civil Miscellaneous Appeal in CMA No.1600 of 2018 is disposed of. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

C.M.A. Nos.1599 and 1600 of 2



1.The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate's Court), Cuddalore.

2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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