IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.Nos.1330 & 1257 of 2022
and C.M.P.No.9609 of 2022

C.M.A.No.1330 of 2022

National Insurance Company Ltd.,
Division IV, 1st Floor,
No.C-17 to 19, Minerva Complex,
S.D.Road,
Secunderabad,
Andhra Pradesh – 500 003. ... Appellant

Versus

1.G.Madhu

2.S.Sivasankara ... Respondents

C.M.A.No.1257 of 2022

G.Madhu ... Appellant

Versus

1.S.Sivasankara

2.National Insurance Company Ltd.,
Division IV, 1st Floor,
No.C-17 to 19, Minerva Complex,
S.D.Road,
Secunderabad,
Andhra Pradesh – 500 003. ... Respondents

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.09.2021 passed in M.A.C.T.O.P.No.431 of 2018, by the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

In C.M.A.No.1330 of 2022

For Appellant : Ms.N.B.Sureka

For R1 : Mr.P.Mani
For R2 : No Appearance

In C.M.A.No.1257 of 2022

For Appellant : Mr.P.Mani

For R1 : No Appearance
For R2 : Ms.N.B.Sureka

COMMON JUDGMENT

C.M.A.No.1330 of 2022 has been filed by the appellant/Insurance Company challenging the liability as well as quantum of compensation awarded by the Tribunal in M.C.O.P.No.431 of 2018, dated 27.09.2021.

C.M.A.No.1257 of 2022 has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.431 of 2018, dated 27.09.2021.

2.For the sake of convenience, parties are referred as per their rank in the claim petition.

3.The claim petition was filed stating that on 11.08.2015, at 7.00 p.m., the claimant was riding his motorcycle bearing Reg.No.TN-70-A-8528 at Guest Line Circle Service Road, Athipalli; that when the claimant tried to take U turn slowly, a car bearing Reg No.KA-51-A-3622, driven by the driver in a rash and negligent manner, dashed against him; that due to the said accident, the claimant sustained multiple grievous injuries; that thus, the claimant was entitled for compensation.

4.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

5.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the claimant took sudden turn and contributed to the accident; that at the time of accident, the offending vehicle viz., the car was not insured with the 2nd respondent; that hence, the 2nd respondent is not liable to pay any compensation to the claimant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.12 on his side. On behalf of the 2nd respondent, two witnesses were examined and Ex.R1 and Ex.W1 to Ex.W6 were marked. The disability certificate of the claimant was marked as Ex.C1.

7.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and being the insurer of the 1st respondent, directed the 2nd respondent to pay a sum of Rs.4,30,903/-, as compensation to the claimant.

8.Aggrieved over the award passed by the Tribunal, the claimant filed C.M.A.No.1257 of 2022, seeking for enhancement of compensation and the 2nd respondent has filed C.M.A.No.1330 of 2022, challenging the liability as well as quantum of compensation awarded by the Tribunal.

9.The learned counsel for the 2nd respondent submitted that the cheque issued by the insured for payment of policy was dis-honoured and hence, the policy was cancelled and the same was also intimated to the insured; that the Tribunal had erroneously held that due intimation about cancellation of policy was not given to the insured and directed the 2nd respondent to pay the compensation; that the learned counsel further submitted that the compensation awarded by the Tribunal was excessive and prayed for allowing the appeal.

10.The learned counsel for the claimant per contra submitted that the Tribunal found that the 2nd respondent had not intimated about the cancellation of policy or dis-honour of cheque immediately; that hence, the Tribunal was right in holding that the 2nd respondent was liable to pay compensation. The learned counsel further submitted that the compensation awarded by the Tribunal is meagre and hence, he prayed for enhancement of compensation.

11.Though notice was sent to the 1st respondent – owner of the vehicle, it could not be served. Hence, this Court permitted the learned counsel for the 2nd respondent/appellant in C.M.A.No.1330 of 2022 to serve a copy of the notice through paper publication. The learned counsel took substituted service through paper publication and filed affidavit of service enclosing paper publication showing the date of the hearing as 22.08.2023. Though the name of the 1st respondent is printed in the cause list, none appeared on behalf of him.

12.The questions involved in the instant appeal are as follows:

a) Whether the Tribunal was right in holding that the 2nd respondent is liable to pay compensation?

b) Whether the Tribunal awarded just and reasonable compensation?

13.As regards the first question, it is seen that though the cheque said to have issued by the insured was dis-honoured, the intimation was given two years after the accident i.e on 25.04.2017. The said intimation was marked as Ex.W1. It is settled position of law, where the insurer have not intimated about the dis-honour of cheque or cancellation of policy to the insured, the Insurance Company is liable to indemnify third party claim. Admittedly, since the intimation was not given before the accident, the 2nd respondent is liable to pay compensation. The Hon'ble Supreme Court in the case of ***United India Insurance Co.Ltd vs. Laxmamma and Others*** reported in ***CDJ 2012 SC 280,*** has held as follows:

> "19.In our view, the legal position is this: where the policy of insurance is issued by an authorized insurer on receipt of cheque towards payment of premium and such cheque is returned dishonoured, the liability of authorized insurer to indemnify third parties in respect of the liability which that policy covered subsists and it has to satisfy award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the M.V.Act unless the policy of insurance is cancelled by the authorized insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorized insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company's liability to indemnify the third parties

> which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.
>
> 20.Having regard to the above legal position, insofar as facts of the present case are concerned, the owner of the bus obtained policy of insurance from the insurer for the period April 16,2004 to April 15, 2005 for which premium was paid through cheque on April 14, 2004. The accident occurred on May 11, 2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated May 13, 2004 on the ground of dishonour of cheque which was received by the owner of the vehcile on May 21, 2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy award of compensation passed in favour of the claimants."

14.The above observation is squarely applicable to the facts of the present case. Further in the said case, the Hon'ble Supreme Court gave liberty to the insurer to prosecute and recover the amount paid to the claimant from the insured. Hence, the 2nd respondent is entitled to take steps to recover the compensation amount determined by this Court from the 1st respondent, owner of the vehicle.

15.As regards second question - quantum of compensation, learned counsel for the claimant submitted that the Tribunal ought to have adopted multiplier method as the claimant in his deposition has clearly stated that he suffered functional disability. This Court is of the view that the claimant's version that he had suffered functional disability is not corroborated by the medical evidence. The Medical Board assessed the disability of the claimant as 30% partial permanent disability. The disability certificate issued by the hospital shows that the claimant had suffered pain in the pelvic region, difficulty in passing urine and unable to sit cross legged. From the above observations, one cannot infer functional disability. In the absence of any proof to hold that the claimant suffered functional disability, the multiplier method cannot be adopted. Therefore, there is no infirmity in the award of the Tribunal in fixing compensation on the basis of percentage method.

16.Further, considering the year of accident, this Court is of the view that the notional income can be fixed at Rs.10,000/- and considering the nature of injuries, loss of income during treatment period can be assessed for two months and the same is enhanced to Rs.20,000/-. Similarly, the award under the head pain and suffering and loss of social amenities can be enhanced to Rs.50,000/- each. The amount awarded by the Tribunal under other heads is just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	**Description**	**Amount awarded by Tribunal (Rs)**	**Amount awarded by this Court (Rs)**	**Award confirmed or enhanced or granted**
1.	Disability	1,20,000	1,20,000	Confirmed
2.	Medical Expenses	2,35,403	2,35,403	Confirmed
3.	Transportation Expenses	8,000	8,000	Confirmed
4.	Extra Nourishment and Attender Charges	12,000	12,000	Confirmed
5.	Pain and Sufferings	24,000	50,000	Enhanced
6.	Social Amenities	24,000	50,000	Enhanced
7.	Loss of Income during treatment period	7,500	20,000	Enhanced
	Total	4,30,903	4,95,403	Enhanced by Rs.64,500/-

17.With the above modification, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.4,30,903/- is hereby enhanced to Rs.4,95,403/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the 1st respondent. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and costs, less the amount already withdrawn, if any. The claimant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

rst
Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

SUNDER MOHAN, J.

rst

To:

1.The Motor Vehicle Accident Tribunal,
Special Sub-Judge,
Krishnagiri District

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

C.M.A. Nos. 1330 & 1257 of 2022
and C.M.P. No.9609 of 2022

22.08.2023