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C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

C.M.A.No.1293 of 2022

United India Insurance Co Ltd.,
No.134, Silingi Building,
No.134 Greams Road,
Chennai – 600 006.

... Appellant

Versus

1.Hari Sai
2.M.Hari Krishnan

... Respondents

C.M.A.No.168 of 2023

Hari Sai

... Appellant

Versus

1.M.Hari Krishnan

2.United India Insurance Co Ltd.,
No.134, Silingi Building,
No.134 Greams Road,
Chennai – 600 006.

... Respondents



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 24.01.2022 passed in M.C.O.P.No.1996 of 2016, by the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

In C.M.A.No.1293 of 2022

For Appellant : Mr.C.Paranthaman

For R1 : Unclaimed

For R2 : Mr.K.Varadhakamaraj

In C.M.A.No.168 of 2023

For Appellant : Mr.K.Varadhakamaraj

For R1 : Unclaimed

For R2 : Mr.C.Paranthaman

COMMON JUDGMENT

C.M.A.No.1293 of 2022 has been filed by the appellant/Insurance Company challenging the direction issued by the Tribunal to pay the compensation in M.C.O.P.No.1996 of 2016, dated 24.01.2022.

C.M.A.No.168 of 2023 has been filed by the appellant/Claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.1996 of 2016, dated 24.01.2022.



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

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

3.The claim petition was filed stating that on 31.01.2016 at about 08.20 hrs, when the claimant was riding a motorcycle bearing Registration No.TN-22-AZ-6752 from South to North near a road junction at Koyambedu Market, Kaliyamman Koil Street, Chennai, at that time another motorcycle bearing Registration No.TN-85-A-1248 proceeding from North to South direction ridden by its rider in a rash and negligent manner at high speed, dashed against the claimant's motorcycle, due to which, the claimant sustained right leg fracture and multiple grievous injuries all over the body; that thus, the claimant was entitled for compensation.

4.The 1st respondent/owner cum rider 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



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

must prove all the averments made by him; that the office of the alleged insurer mentioned in the address does not issue policies to motor vehicles, only the Branch Manager and Divisional Offices issues policies and that the claimant has to furnish correct address of the 2nd respondent; 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.11 on his side. The 2nd respondent examined one witness on their side and marked Ex.R1 to Ex.R3. The disability certificate issued to the claimant by the Regional Medical Board, Govt, Royapettah Hospital, Chennai was marked as Ex.C1.

7.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent riding by the rider of the offending vehicle and being the insurer of the motorcycle belonging to the 1st respondent, directed the 2nd respondent to pay a sum of Rs.3,44,169/- as compensation to the claimant.



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

8. Aggrieved over the award passed by the Tribunal, the 2nd respondent has filed C.M.A.No.1293 of 2022 questioning the liability fixed on them by the Tribunal to pay the compensation amount and the claimant has filed the C.M.A.No.168 of 2023 seeking enhancement of compensation.

9. The learned counsel for the 2nd respondent submitted that the Tribunal on the basis of evidence had found that the 1st respondent had violated the policy condition since he rode the motorcycle without any valid license. The 2nd respondent had examined its officials and marked Ex.R1-legal notice sent to the 1st respondent stating about the violation of policy condition. The learned counsel relying upon the Judgment of the Hon'ble Division Bench of this Court in the case of ***Reliance General Insurance Co. Ltd., vs. Devi and others*** reported in ***2021 (2) TN MAC 742 (DB)***, submitted that since the 1st respondent had not produced any valid license, it is sufficient to infer violation of policy condition and the Tribunal ought to have granted permission to recover the compensation amount from the insured and prayed for allowing the appeal in C.M.A.No.1293 of 2022.



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

10.The learned counsel for the claimant/appellant in C.M.A.No.168 of 2023 submitted that the compensation awarded towards pain and suffering, transportation and extra nourishment needs enhancement considering the nature of injuries suffered by the claimant. The learned counsel further submitted that the award under other heads are just and reasonable and prayed for allowing the appeal in C.M.A.No.168 of 2023.

11.Notice sent to the 1st respondent has been returned with an endorsement “Unclaimed”.

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

(i)Whether the Tribunal ought to have granted permission to the 2nd respondent/Insurance Company to recover the compensation amount from the 1st respondent/insured for the violation of policy condition?

(ii)Whether the compensation awarded by the Tribunal is just and reasonable?



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

13.As regards the first question, the 2nd respondent examined R.W.1, its official and marked Ex.R1-legal notice issued to the 1st respondent informing about the violation of policy conditions. The Tribunal on consideration of evidence found that the 1st respondent had ridden the offending vehicle without valid driving license and hence, violated the terms of insurance policy. Having held so, this Court is of the view that the Tribunal ought to have permitted the 2nd respondent to pay the compensation at the first instance and thereafter recover the same from the 1st respondent. This Court in ***Reliance General Insurance Co. Ltd., vs. Devi and others*** reported in ***2021 (2) TN MAC 742 (DB)*** has held as follows:

“8.A perusal of the records shows that the Insurance Company issued notice to the owner and rider of the offending motorcycle to produce the driving license and in spite of receipt of the said notice, the fifth respondent/owner of the vehicle did not produce the driving license and also remained absent before the Tribunal and was set *ex-parte* and had not appeared even before this Court inspite of newspaper publication.



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C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

9.We find some force in the submissions made by the learned counsel for the appellant/Insurance Company. When a notice was issued by the Insurance Company, it is for the owner of the vehicle to produce the driving license, but the Tribunal held that it is for the Insurance Company to summon the RTO and produce the license. Therefore, we are of the opinion that the finding rendered by the Tribunal is liable to be set aside on this score. The onus is on the appellant/Insurance Company to initially pay the compensation to the claimants and thereafter recover the same from the owner of the offending vehicle in question.”

14.The above observation is squarely applicable to the facts of the present case. Since, the 1st respondent did not possess valid driving license at the time of accident, this Court is of the view that the 2nd respondent shall pay the compensation amount to the claimant at the first instance and thereafter recover the same from the 1st respondent.

15.As regards the second question - quantum of compensation, the learned counsel for the claimant is unable to point out any error except stating that the award under the heads pain and sufferings, transportation



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

WEB COPY

and extra nourishment may be enhanced.

16.Considering the nature of injuries, the amount awarded under the head pain and suffering is enhanced to Rs.30,000/- and the amount awarded under the head extra nourishment and transportation is enhanced to Rs.25,000/-. The amounts awarded by the Tribunal under other heads is just and reasonable and hence 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	1,05,000	1,05,000	Confirmed
2.	Attender Charges	3,150	3,150	Confirmed
3.	Loss of Amenities	20,000	20,000	Confirmed
4.	Pain and Sufferings	20,000	30,000	Enhanced
5.	Extra Nourishment and Transportation	15,000	25,000	Enhanced
6.	Damages of Clothes	1,000	1,000	Confirmed
7.	Loss of Income for 5 months	75,000	75,000	Confirmed
8.	Medical Bills	1,05,019	1,05,019	Confirmed
	Total	3,44,169	3,64,169	Enhanced by



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

		rounded off to Rs.3,44,200	rounded off to 3,64,200	Rs.20,000/-
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17. With the above modification, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.3,44,200/- is hereby enhanced to Rs.3,64,200/- 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 thereafter, recover the same from the 1st respondent. On such deposit, the claimant is permitted to withdraw the entire award amount along with interest and cost, less 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.

18.08.2023

rst



C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Accident Claims Tribunal,
III Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section, High Court, Madras.

SUNDER MOHAN, J.

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C.M.A.No.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022



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C.M.A.Nos.1293 of 2022 & 168 of 2023
and C.M.P.No.9379 of 2022

18.08.2023