IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

C.M.A Nos.1911 and 1999 of 2014
and
MP.No.1 of 2014

CMA.No.1911 of 2014
IFFCO -TOKIO General Insurance
Company Limited
No.28, (Old No.195), II Floor
North Usman Road, T.Nagar
Chennai-600 017. ... Appellant

Versus

1. K.S.Amala
2. R.Manohar
(R2 set exparte before the Tribunal) ... Respondents

CMA No.1999 of 2014

K.S.Amala .... Appellant

Versus

1.R.Manohar
2.IFFCo -TOKIO General Insurance
Company Limited
No.28, (Old No.195), II Floor
North Usman Road, T.Nagar
Chennai-600 017. ... Respondents

These two Civil Miscellaneous Appeals are filed against the award and decree dated 16.12.2012, made in M.C.O.P.No.507 of 2011 on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellant/Insurance Company
in CMA No.1911 of 2014 : M/s.K.Saraswathy
for Mr.C.R.Krishnamoorthy

For Appellant/ Claimant
in CMA No.1999 of 2014 : Mr.K.Varadakamaraj

COMMON JUDGMENT

CMA No.1911 of 2014 has been preferred by the Insurance Company and CMA No.1999 of 2014 has been preferred by the claimant against the award and decree dated 16.12.2013, passed by the Motor Accident Claims Tribunal/ VI Judge, Court of Small Causes, in MCOP No.507 of 2011.

2. As per the claim petition, on 28.12.2010 at about 7.30 hours, at Strahans Road, Pattalam, Chennai-12, when the claimant was walking along the northern side of Strahans Road, slowly and cautiously from west to east, the driver of the motor cycle bearing Registration

No.TN 20 AK 8120 came in a rash and negligent manner and hit against the claimant. In the impact, she sustained grievous injuries.

3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the vehicle and hence, directed the Insurance Company to pay a sum of Rs.2,30,000/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimant and recover the same from the owner of the vehicle, the 1st respondent in MCOP No.507 of 2011.

4. Questioning the liability of pay and recovery and quantum of award, the appellant/Insurance Company has come forward with CMA No.1911 of 2014.

5. Being not satisfied with the quantum of the award, the claimant has filed CMA No.1999 of 2014.

6. The learned counsel for the appellant/Insurance company in CMA No.1911 of 2014 contended that the Tribunal has failed to note that in the absence of citing the correct owner of the vehicle viz., Syed Ismail, the Appellant/Insurance company is not liable for pay and recovery rule as adopted by it. While there is a breach of policy conditions under Section 149(2 (a) (ii) of MV Act, the Tribunal ought to have held that the Insurance company is not liable and consequently ought not to have directed to pay and recover from the insured. The compensation awarded by the Tribunal under the heads namely transportation, extra nourishment, medical expenses, loss of amenities and pain and suffering is highly excessive and hence, he prays to reduce the award amount.

7. On the other hand, the learned counsel appearing for the appellant/claimant in CMA No.1999 of 2014 submitted that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. He further submitted that though the Doctor/PW2 assessed 20% disability, the Tribunal has rejected the same without considering the grievous injuries sustained by the claimant in her head

and also the disability compensation awarded by the Tribunal is very low. The compensation awarded under the heads of pain and suffering, transport and nourishment, loss of amenities and loss of earnings is very low. No amount was awarded towards attender charges, future medical expenses and loss of earning power. Hence, he prays to dismiss the appeal filed by the Insurance Company and to enhance the compensation amount claimed by the claimants.

8. Heard Mr.C.R.Krishnamoorthy, the learned counsel appearing for the Insurance Company and Mr. K.Varada Kamaraj, the learned counsel appearing for the claimant.

9. The main contention of the Insurance Company is that without impleading the correct owner of the vehicle, the pay and recovery rule adopted by the Tribunal is not correct. It is not disputed that the first respondent in MCOP No.507 of2011 is the owner of the vehicle and the said vehicle was insured with the second respondent. On perusal of records, it would reveal that the driver of the offending vehicle did not possess driving license at the time of accident and thereby the owner of

the vehicle has violated the policy terms and conditions However, as the policy coverage is only in the name of the 1st respondent in MCOP No.507 of 2011, there is no error in impleading him alone as party to the proceedings. It is now settled law that whenever the driver of the insured vehicle was not possessing a driving license at the time of the accident, the Insurance Company will have to pay the compensation amount to the claimant and recover the same from the owner of the vehicle (insured). Accordingly, as seen from the impugned award, the Tribunal has rightly awarded pay and recovery rights to the Appellant/Insurance Company and therefore, there is no scope for interference by this Court.

10. Insofar as the assessment of disability by the Tribunal is concerned, eventhough the doctor/PW2 assessed disability at 20% for the head injury sustained by the claimant, the Tribunal has rightly rejected the same in view of the fact that the CT brain scan report (Ex.P5) is normal. The doctor/PW3 assessed the liability at 30% for dislocation of three upper jaw teeth's and changes in movement of muscles. Considering the nature of injuries and the evidence of PW3 and Ex.P12 disability certificate, the Tribunal has fixed the disability at 30%. Hence, the

disability fixed by the Tribunal is a correct assessment.

11. Insofar as the assessment of disability compensation at Rs.2,000/- per percentage is concerned, the same is very low since the year of the accident is 2010. However, this Court is inclined to award disability compensation at Rs.3000/- per percentage and the disability compensation is enhanced to Rs.90,000/- by this Court instead of Rs.60,000/- assessed by the Tribunal. The Tribunal has failed to award any amount towards attender charges. In the considered view of this Court, it would be appropriate to award a compensation of Rs.10,000/- towards attender charges.

12. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

13. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified as follows:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Loss of income for 4 months (Rs.8500 x 4)	34,000/-	34,000/-
Transportation, Extra Nourishment	25,000/-	25,000/-
Damages to clothes	1,000/-	1,000/-
Medical Expenses	30,000/-	30,000/-
Disability of 30%	(2000 x 30) 60,000/-	(3000 x 30) 90,000/-
Loss of amenities	40,000/-	40,000/-
Pain and suffering	40,000/-	40,000/-
Attender charges	Nil	10,000/-
Total	**2,30,000/-**	**2,70,000/-**

14. In the result,

(i) The Appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.2,70,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.507 of 2011 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant along with accrued interest through RTGS within a period of two weeks thereafter.

15. Accordingly, CMA. No.1999 of 2014 filed by the claimant is partly allowed by enhancing the award of the Tribunal from Rs.2,30,000/- to Rs.2,70,000/-. CMA No.1911 of 2014 filed by the Insurance Company is is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.06.2023

Index : Yes/No
Speaking order/Non-Speaking order
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To

1. The Motor Accident Claims Tribunal
VI Judge, Court of Small Causes
Chennai.

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

A.A.NAKKIRAN J.

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and M.P No.1 of 2014

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