



C.M.A.Nos.1684 & 1685 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.Nos.1684 & 1685 of 2017
and C.M.P.Nos.9024 & 9025 of 2017

HDFC ERGO General Insurance
Company Ltd.,
4th Floor, Rajanarayanan Towers,
No.70, Race Course Road,
Coimbatore – 641 018.

... Appellant in both C.M.As

Vs.

1.M.Velmurugan	... 1 st Respondent in C.M.A.No.1684 of 2017
1.M.Matheswaran	... 1 st Respondent in C.M.A.No.1685 of 2017
2.J.Hilda Roselin	
3.A.Jose	... 2 nd & 3 rd Respondent in both C.M.As.

Common prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against Judgment and Decree dated 14.03.2016 passed in M.C.O.P.Nod.1333 & 1336 of 2013 on the file of the Motor Accident Claim Tribunal, Chief Judicial Magistrate Court, Tiruppur.

For Appellant : Mr.K.Poomalai

For Respondents

For R1	: Mr.K.Myilsamy
For R2 & R3	: Mr.N.Manoj Kumar



C.M.A.Nos.1684 & 1685 of 2017

WEB COPY

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the Judgment and Decree dated 14.03.2016 passed in M.C.O.P.Nos.1333 & 1336 of 2013 respectively on the file of the Motor Accident Claim Tribunal, Chief Judicial Magistrate Court, Tiruppur.

2. The Insurance Company is the appellant herein, filed the above appeals on the ground of quantum.

3. On 22.07.2013 at about 9.00 hours, when the claim petitioners M.Velmurugan and M.Matheswaran riding the Hero Honda Splendor motorcycle bearing Reg.No.TN-37-BP-4200 in NH-47 main road, near Karuthampatti Saravana Bhavan hotel, a TATA Ace bearing Reg.No.37-AT-1267, came in a rash and negligent manner and without following traffic rules, dashed on the two wheeler. Hence the accident occurred, due to which, the claim petitioners sustained grievous injuries. Immediately, they were taken to KGM hospital and taken treatment. Hence, the petitioner in M.C.O.P.No.1333



C.M.A.Nos.1684 & 1685 of 2017

of 2013 filed petition for compensation of Rs.7,00,000/- and the petitioner in M.C.O.P.No.1336 of 2013 filed petition for compensation of Rs.10,00,000/-.

4. The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, insured with the appellant/Insurance Company are not in dispute in these appeals and hence, the finding rendered by the trial Court in this regard are hereby confirmed.

5. Before the Tribunal, on the side of the claim petitioners P.W.1 to P.W.5 were examined and Ex.1 to Ex.14 were marked and on the side of the respondents D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D3 were marked.

6. On appreciation of the materials before it, the Tribunal awarded compensation in M.C.O.P.No.1333 of 2013 as follows:

(a) Loss of earning capacity & Loss of future income	:	Rs. 4,60,800/-
(b) Medicine and Medical expenses	:	Rs. 48,070/-
(c) Loss of income	:	Rs. 40,000/-
(d) Transportation, Extra nourishment & Attender charges	:	Rs. 25,000/-
(e) Loss of pain and suffering	:	Rs. 50,000



WEB COPY



C.M.A.Nos.1684 & 1685 of 2017

Rs. 6,23,870/-

The said sum was directed to be paid by the first respondent along with interest at 7.5% per annum from the date of petition till the date of deposit of the award amount.

7. On appreciation of the materials before it, the Tribunal awarded compensation in M.C.O.P.No.1336 of 2013 as follows:

(f) Loss of earning capacity & Loss of future income	:	Rs. 6,12,000/-
(g) Medicine and Medical expenses	:	Rs. 21,950/-
(h) Loss of income	:	Rs. 24,000/-
(i) Transportation, Extra nourishment & Attender charges	:	Rs. 20,000/-
(j) Loss of pain and suffering	:	Rs. 40,000
		----- Rs. 7,17,950/- -----

The said sum was directed to be paid by the first respondent along with interest at 7.5% per annum from the date of petition till the date of deposit of the award amount.

8. The learned counsel for the appellant/insurance company submitted that the Tribunal has grossly erred in directing the appellant insurer to pay and recover from the insured, when the insured driver/2nd respondent did not possess valid and effective driving license to drive the insured vehicle on the date of



C.M.A.Nos.1684 & 1685 of 2017

accident. The Tribunal failed to appreciate the evidence of RW1 (RTO) and EX.R2 and R3 which clearly substantiates the fact that the insured driver did not possess requisite badge endorsement to drive the insured vehicle thereby there was a breach of Rules. He further submitted that the Tribunal erred in fixing monthly income of the petitioner is highly excessive when there is no evidence to prove that the petitioners have suffered total permanent disablement and cannot continue his avocation in future. The total compensation of Rs.6,23,870 awarded in M.C.O.P.No1333 of 2013 and Rs.7,17,950 awarded in M.C.O.P.No.1336 of 2013 is untenable and liable to be interfered.

9. M.Velmurugan, the claim petitioner in M.C.O.P.No.1333 of 2013 (C.M.A.No.1684 of 2017) working as painter, who had sustained injuries in the accident and as per the Ex.P13 / Disability Certificate, he sustained “Closed right patella fracture” and accordingly, the partial disability is fixed at 32.6% and hence, Rs.4,60,800/- ($8000 + 4000 \times 12 \times 16 \times 20 / 100 = \text{Rs.}4,60,800/-$) awarded towards disability of loss of income in future and the same is confirmed. Taking note of the injury sustained, as reflected in Ex.P2, P3 and P13, the Tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings and the same is hereby confirmed. As per Ex.P4 / Medical Bills issued by Ganga Hospital, the



C.M.A.Nos.1684 & 1685 of 2017

Tribunal has awarded a sum of Rs.48,070/- for medical expenses and the same is also confirmed, for transportation, extra nourishment and attender charges Rs.25,000/- is awarded and the same is also confirmed. The Tribunal awarded Rs.40,000/- towards loss of income and the same is hereby deleted. The compensation awarded by the Tribunal is modified as follows:-

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Disability and Loss of future income	Rs.4,60,800/-
2	Pain and sufferings	Rs.50,000/-
3	Transportation, extra nourishment and attender charges	Rs.25,000/-
4	Loss of income	deleted
5	Medical expenses	Rs.48,070/-
	Total	Rs.5,83,870/-

Accordingly, the compensation awarded by the Tribunal is modified from Rs.6,23,870/- to Rs.5,83,870/-.

10. M.Matheswaran, the claim petitioner in M.C.O.P.No.1336 of 2013 (C.M.A.No.1685 of 2017) working as tailor at BBS Garments, who had sustained injuries in the accident. As per the Ex.P7 / Disability Certificate, he sustained “Crush amputation of right 4th toe at MPX level -Subtotal amputation of 5th toe at MPS level – tip viable – Abrasion 3rd toe and proximal right leg” and



C.M.A.Nos.1684 & 1685 of 2017

accordingly, the partial disability is fixed at 25% and and hence, Rs.6,12,000/- (8000+4000x12x17x25%=Rs.6,12,000/-) awarded towards loss of earning capacity and loss of future income. Considering the injury sustained by the petitioner and a perusal of Ex.P7, this Court is inclined to fix percentage of disability from 25% to 20%. Accordingly, the compensation awarded under the head loss of earning capacity and loss of future income is modified as follows;-

$$(8000+4000 \times 12 \times 17 \times 20\% = \text{Rs.}4,89,600/-)$$

11. Taking note of the injury sustained in the said accident, as reflected in Ex.P6 and Ex.P11, the Tribunal has awarded a sum of Rs.40,000/- towards pain and sufferings and the same is hereby confirmed. As per Ex.P8 / Medical Bills issued by Ganga Hospital, the Tribunal has awarded a sum of Rs.21,950/- for medical expenses and the same is also confirmed, for transportation, extra nourishment and attender charges Rs.20,000/- is awarded and the same is also confirmed. The Tribunal awarded Rs.24,000/- towards loss of income. in view of the compensation awarded under the head loss of earning capacity and loss of future income the same is hereby deleted. Accordingly, the compensation awarded by the Tribunal is modified as follows;-



WEB COPY



C.M.A.Nos.1684 & 1685 of 2017

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Disability and Loss of future income	Rs.4,89,600/-
2	Pain and sufferings	Rs.40,000/-
3	Transportation, extra nourishment and attender charges	Rs.20,000/-
4	Loss of income	deleted
5	Medical expenses	Rs.21,950/-
	Total	Rs.5,71,550/-

Accordingly, the compensation awarded by the Tribunal is modified from Rs.7,17,950/- to Rs.5,71,550/-.

12. The Insurance Company draw the attention to the Court that LLR license is not a valid one to drive a vehicle in a public place, as per Rule 3 of Central Motor Accidents Act, which leads to violation of policy condition and he has also relied upon various judgments in that regard and hence, he prayed to order pay and recover.

13. As per the above details, on the date of the accident ie., 22.07.2013, the driver of the offending vehicle is having LLR, but it is not a valid license to drive TATA Ace, which is the violation of policy condition. Therefore, based on the following judicial decisions made by the Hon'ble Apex Court in various



C.M.A.Nos.1684 & 1685 of 2017

cases, pay and recover is ordered and hence, the Insurance Company is required to pay the award amount and recover the same from the owner of the vehicle in both the cases.

CMA.No.1684 of 2017;

14.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.6,23,870/- to Rs.5,83,870/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance company is directed to deposit the modified award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioner/1st respondent is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance company shall pay the modified award amount and recover the same from the owner of the vehicle.

(v) the claim Petitioner/1st respondent is directed to pay the court fee, if any, for



C.M.A.Nos.1684 & 1685 of 2017

the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

CMA.No.1685 of 2017;

15.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.7,17,950/- to Rs.5,71,550/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance company is directed to deposit the modified award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioner/1st respondent is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance company shall pay the modified award amount and recover the same from the owner of the vehicle.

(v) the claim Petitioner/1st respondent is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.



C.M.A.Nos.1684 & 1685 of 2017

WEB COPY

09.06.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

ata

To

The Presiding Officer,
The Motor Accident Claim Tribunal (Chief Judicial Magistrate),
Tiruppur.

A.A.NAKKIRAN.J.

ata



WEB COPY



C.M.A.Nos.1684 & 1685 of 2017

C.M.A.Nos.1684 & 1685 of 2017

09.06.2023