IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.Nos.3444 of 2017 and 1750 of 2018
and
C.M.P.No.21820 of 2017

United India Insurance Company Limited,
Sillingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai-600 006. ...Appellant in CMA No.3444 of 2017

G.Arulmathi ... Appellant in CMA No.1750 of 2018

Vs.

1. G.Arulmathi

2. K.Krishnan ...Respondents in CMA No.3444 of 2017

1.K.Krishnan

2.United India Insurance Company Limited,
Sillingi Building, New No.134,
Old No.40-45, Greams Road,
Chennai-600 006. ...Respondents in CMA No.1750 of 2018

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.03.2017 made in M.C.O.P.No.263 of 2014 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, at Chennai.

For Appellant : M/s.Ramya V Rao

For Respondents : Mr.P.Sankaranarayan for R2

COMMON JUDGMENT

Civil Miscellaneous Appeal No.3444 of 2017 is filed challenging the award dated 01/03/2017 passed in MCOP.No.263 of 2014 on the file of the Motor Accident Claims Tribunal (IV-Judge, Court of Small Causes) at Chennai, whereby the Tribunal has directed the Insurance Company to pay the compensation for a sum of Rs.2,91,400/- with interest at the rate of 7.5% interest per annum from the date of petition till the date of payment.

2. Civil Miscellaneous Appeal No.1750 of 2018 is filed by the claimant seeking for enhancement of compensation of award dated 01/03/2017 passed in MCOP.No.263 of 2014 by the Motor Accident Claims Tribunal (IV-Judge, Court of Small Causes) at Chennai.

3. Since, both the Civil Miscellaneous Appeals are arising out the same award, both the Appeals are taken up together for hearing and

common judgement is passed.

4. The parties are referred to hereunder according to status and ranking before the Tribunal.

5. The case of the Claimant is as follows:

On 18.07.2012 at about 05.30 hours, the petitioner was travelling in motorcycle bearing Registration No.TN-21-Q-1272 as a pillion rider from Poonchery to Thiruporur Salai on the OMR road. When the vehicle reached near Paiyanur, T.V.S.Company, the rider of the two wheeler has driven the vehicle in a rash and negligent manner in high speed, at that time some buffaloes suddenly entered the road and to avoid hitting the buffaloes, rider suddenly applied brake which resulted in skidding of the vehicle due to which the petitioner fell down and sustained grievous injuries. The first respondent as the owner and the second respondent as the insurance company are liable to pay the compensation.

6. Before the Tribunal, the first respondent remained exparte and the second respondent has filed a counter and contented that due to the petitioner's own negligence, while driving the two wheeler, she

slipped, fell down and sustained injuries. The learned counsel for the second respondent also contended that there is no policy coverage for the pillion rider, hence she has to be treated as gratuitous passenger and therefore, the insurance company is not liable to pay the compensation, hence prays to dismiss the claim petition.

7. Before the Tribunal, on the side the claimant P.W.1 to P.W.3 were examined and Exs.P.1 to P.22 were marked on the side of the claimant and on the side of the Respondents, R.W.1 was examined and Exs.R.1 to R.7 were marked in support of their contention.

8. Based on the evidence placed on record, the Tribunal in Point No.1 has held that the accident has occurred due the rash and negligent driving of the Driver of first respondent. In point Nos.2 and 3, the Tribunal has assessed the disability and the quantum of compensation to be awarded and awarded a sum of Rs.2,91,400/- as a compensation. In Point No.4, Tribunal has held that the second respondent/Insurance Company is liable to pay the compensation to the claimant as the policy covers the pillion rider also, thereby directed the second respondent to pay the compensation. Aggrieved over the direction to pay the compensation to the claimant, CMA No.3444 of 2017 is filed by the Insurance Company

and CMA.No.1750 of 2018 is filed by the claimant.

9. Learned counsel for the insurance company would submit that the policy taken by the first respondent has no coverage for the pillion rider and there is no additional payment paid. He would submit that the Tribunal has wrongly held P.A coverage is also includes the Pillion rider which is against the settled principles of law that in the absence any payment of additional premium, the pillion rider shall be considered only as a gratuitous passenger and the Insurance Company is not liable to pay the compensation to the gratuitous passenger and prays to absolve the insurance company from paying compensation.

10. Learned counsel for the claimant would submit that the Tribunal has interpreted the Insurance Policy which was marked as Ex.R.2 and held that the pillion rider is also covered under the policy and rightly awarded the compensation to the claimant herein. Tribunal has also failed to award just compensation and has not properly assessed the disability and granted compensation under various heads which is on lower side and prays to enhance the same.

11. I have considered the submissions made by learned counsel

appearing on both sides and perused the materials placed on record.

12. On perusal of Ex.R2, the schedule of premium clearly shows that apart from the third party basic amount Rs.20/- has been collected under the head P.A to unnamed passengers Numbering 2. Another Rs.50/- also collected for compulsory P.A to owner driver. This schedule of premium supports the case of the claimant that the pillion rider is also covered under the policy. Admittedly, it is a two wheeler the permissible capacity of the vehicle is two persons, the Insurance Company has collected Rs.330/- and Rs.50/- for compulsory P.A to owner driver and P.A to unnamed passengers numbering 2, shows that two passengers who are not the owner of the vehicle are also covered under the policy. In the said circumstances, the contention of the Insurance Company that there is no coverage to the pillion rider is not acceptable. Hence this Court is not inclined to accept the case of the Insurance Company, that there is no policy coverage to the pillion rider and the judgment relied on by the Insurance Company in ***United India Insurance Company Ltd., vs. Sathish Kumar and Ors***., reported in MANU/TN/0926/2019, that the pillion riders are not entitle to compensation, if there is no policy coverage is not applicable to the facts of the case and the same is liable to be rejected.

13. Tribunal has assessed the disability by the Doctors who were examined as P.W.2 and P.W.3 and granted Rs.3,000/- per percentage of compensation. As per the disability certificate produced by P.W.2, claimant has sustained the following injuries.

i) fracture of left clavicle

ii) fracture of distal radius and ulnar styloid left.

As per the disability certificate produced by P.W.3, claimant has sustained the following injuries.

1. left ear bleeding++
2. complaints of hard of hearing.

By considering the above injuries, Tribunal has fixed the disability as 45%. Before this Court, the claimant has not substantiated any material or any valid point to modify the assessment of disability made by the Tribunal. The opinion of P.W.3 regarding the complaints of hearing was not accepted by the Tribunal and at the same time it was also not rejected. Based on the fracture in the left clavicle, fracture on the distal radius and ulna styloid left, fixing disability at 45% is proper and the Tribunal has awarded Rs.3,000/- per percentage of injury and the same is also reasonable. Hence, this Court is not inclined to modify the award of compensation for the disability sustained by the claimant. As far as Extra

Nourishment, Transport to Hospital and Attender Charges are hereby enhanced to Rs.10,000/-, Rs.10,000/- and Rs.2000/- respectively. Considering the nature of injuries and the claimant being a lady, this Court is of the opinion that loss of amenities also requires modification and accordingly awarded enhanced compensation of Rs.25,000/-. This Court is of the opinion that the award of the Tribunal under the other heads are just, fair and reasonable and does not find any reason to interfere with the same and accordingly the same is confirmed. In the light of the above discussion, the award of the Claims 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	1,35,000/-	1,35,000/-	Confirmed
2.	Pain and Suffering	45,000/-	45,000/-	Confirmed
3.	Extra Nourishment	4,500/-	10,000/-	Enhanced
4.	Transport to Hospital	4,500/-	10,000/-	Enhanced
5.	Damages to Clothes	1,000/-	1,000/-	Confirmed
6.	Attender Charges	800/-	2,000/-	Enhanced
7.	Medical Expenses	66,521/-	66,521/-	Confirmed

8.	Future Medical Expenses	4,500/-	4,500/-	Confirmed
9.	Loss of Income	19,500/-	19,500/-	Confirmed
10	Loss of Amenities	10,000/-	25,000/-	Enhanced
	Total	**Rs.2,91,321/-**	**Rs.3,18,521/-**	**Rs.27,200/- Enhanced**

14. In fine, the claimant would be entitled to an enhanced compensation of Rs.3,18,521/-. The Insurance company is directed to deposit a sum of Rs.3,18,521/-along with interest at the rate of 7.5% per annum, from the date of accident till the date of payment, less any amount if already paid. On such deposit, the claimant would be entitled to withdraw the said amount by making appropriate application before the Claims Tribunal.

15. Accordingly, C.M.A.No.1750 of 2018, filed by the claimant is partly allowed and C.M.A.No.3444 of 2017, filed by the Insurance Company is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

17 .08.2023

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Index : Yes/No

Neutral Citation : Yes/No

K.RAJASEKAR, J.

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To:

1.The Motor Accident Claims Tribunal,
IV Judge, SCC, Chennai.

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

C.M.A.No. 3444 of 2017
and
C.M.A.Nos.1750 of 2018

17.08.2023