IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.213 & 215 of 2020
and
CMP.Nos.1628 & 1636 of 2020

The Manager,
National Insurance Co. Ltd.,
1st Floor, Saradhamma Buildings,
By-pass Road, Hosur – 635 109. ...Appellant in both CMA's.

Vs.

1. Puttamma ...1st respondent in CMA.No.213 of 2020
2. Muniraj ...1st respondent in CMA.No.215 of 2020
3. M.Girish (Death) ...2nd respondent in both CMA's.

(2nd respondent in both CMA's set Exparte,
notice may be dispensed with)

Prayer in CMA.No.213 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the Judgment and decree dated 25.07.2019 passed in M.C.O.P.No.137 of 2017 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Hosur.

Prayer in CMA.No.215 of 2020: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the Judgment and decree dated 25.07.2019 passed in M.C.O.P.No.136 of 2017 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Hosur.

In both CMA's.:

For Appellant : Mr.J.Chandran

For Respondent : Mr.C.Prabakaran, for R1

COMMON JUDGMENT

Since both the appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the common judgment and decree dated 25.07.2019 passed in M.C.O.P.Nos.136 & 137 of 2017 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Hosur, the insurer has come up with these appeals.

3. For brevity, the respective 1st respondent in CMA.No.215 of 2020 and CMA.No.213 of 2020 will be referred to as 1st and 2nd claimant.

4. The case of the appellant is that, the claimants, who are none other than son and mother, filed their respective claim petitions alleging that, on 22.10.2014 at about 11.15 pm., when the claimants were travelling as

pillion riders in the Honda Unicorn bike bearing Regn.No.TN-24-U-9868, owned and driven by one Girish, who is none other than the brother and son of the respective claimants, insured with the appellant-insurance company, due to the rash and negligent driving of the said Girish, the above said two wheeler dashed against an unknown lorry, due to which, the said Girish died on spot and the claimants sustained grievous injuries all over their body and got admitted in the hospital. Thereby, they filed their respective claim petitions claiming compensation for the injuries and loss of income sustained by them. After contest, the tribunal, vide impugned judgment awarded compensation of Rs.10,48,860/- in favour of the 1st claimant and Rs.4,56,660/-, in favour of th 2nd claimant, after deducting 10% towards negligence fixed on the claimants for triple driving. Aggrieved by the said order, the appellant has come up with these appeals, questioning the liability of the insurer.

5. Learned counsel for the appellant submitted that, it is not in dispute that three persons have travelled in the appellant insured vehicle at the time of accident, which is a clear violation of policy conditions and thereby, the

appellant cannot be made liable to compensate the claimants. Further, though the claimants claim that accident happened when the deceased drove the vehicle in a rash and negligent manner and dashed against the unknown lorry, however, the owner and insurer of the said lorry were not impleaded as necessary parties for fixing contributory negligence as against the driver of the said lorry. While so, instead of dismissing the claim petition filed by the claimants for non-impleadment of necessary parties, the tribunal had fastened the entire liability as against the appellant alone which is not sustainable. Further, non-impleading the insurer and owner of the said unknown lorry itself shows that the entire negligence is on the part of the deceased, and when the deceased driver is the tort-feasor, due to whose negligence the above said accident had taken place, claiming compensation as against the insurer of the vehicle in which the claimants have travelled at the time of accident is not maintainable. Further, even if it is presumed without admitting that the insurer is liable to pay the compensation, the compensation awarded by the tribunal is on the higher side and the tribunal, without considering the fact that the disability sustained by the claimants is not of functional in nature, had adopted multiplier method for awarding compensation under the head loss of earning capacity due to disability, which is wholly perverse and the same has to necessarily be interfered. In the alternative, it is the stand of the appellant that even as per the terms and conditions of the policy, only one pillion rider is entitled to claim compensation and not both and therefore, the second claim petition has to be dismissed. Hence, this Court may set aside the award passed by the tribunal in M.C.O.P.No.137 of 2017 filed by the 2nd claimant, as the claim made by the 1st claimant in M.C.O.P.No.136 of 2017 was earlier and the claim of the 2nd claimant is the later one.

6. Learned counsel appearing for the claimants submitted that, by rightly appreciating all the oral and documentary materials, just and reasonable compensation has been awarded. It is further submitted that the policy does not mandate that three persons should not travel in the vehicle and so long as the policy is a package policy, as in the present case, the claimants would be entitled to compensation. The Tribunal has rightly considered all the above and awarded compensation, which does not require any modification.

7. Heard learned counsel for the appellant and the learned counsel appearing for the respective 1st respondent/claimants and perused the material documents placed on record.

8. It is not in dispute that three persons have travelled in the vehicle in question at the time of accident. The 2nd claimant is the mother and the 1st claimant and the deceased/driver are her sons, and the said fact is also not in dispute.

9. True it is that the owner and driver of the lorry and the insurer of the lorry have not been impleaded as party respondents before the Tribunal based on which the appellant claims that the petition is not maintainable for non-joinder of parties, however, such a contention cannot be countenanced for the simple reason that even according to the claimants, no rash and negligent driving is attributed to the driver of the lorry and it is the case of the claimants that it is only the driver of the two wheeler, who had driven the vehicle in a rash and negligent manner and he is the tort-feasor and as such the non-impleadment of the owner and insurer of the lorry would not

have any impact in appreciating the liability of the appellant herein. Further, in the absence of any claim being made for the death of the deceased, who is the tort-feasor, the non-impleadment does not suffer any illegality. Therefore, the said contention deserves to be rejected.

10. Coming to the main issue that is canvassed before this Court is that three persons had travelled in the vehicle, which has a carrying capacity of two persons including the driver of the vehicle and, therefore, only two persons would be covered under the terms of the policy. In this regard, it is fairly admitted by the appellant that the vehicle is covered under a package policy and that the pillion rider would be covered under the policy. However, it is a violation of the policy conditions to carry more than one person in the pillion and, therefore, the insurer would not be liable to compensate the claim made by the claimants.

11. The coverage under a package policy would be for the driver and the pillion rider with which there is no quarrel. In the case on hand, three persons had travelled in the vehicle, including the driver and, therefore,

definitely the additional person would not be entitled to claim compensation at the hands of the insurer. Though the insurer claims that it is violation of the policy conditions to carry more than two persons in the vehicle and, therefore, the insurer would not be liable to pay the compensation, however, merely because there is violation of policy conditions by the insured would not be a ground to negate the claim of the claimants to the compensation, more particularly, if the pillion rider is covered by the terms of the policy. However, it is to be pointed out that though more than one pillion rider had travelled in the vehicle, the coverage would extend only to one pillion rider. However, which of the pillion rider would be covered is the question to which an answer would be easily available, as the person, who had first laid the claim petitioner would have a march in terms of a claim for compensation from the hands of the insurer.

12. Therefore, to that extent, the compensation awarded to the other pillion rider cannot be sustained and the pillion rider, who had filed the claim petition at the first instance would be entitled to compensation at the hands of the insurer/appellant herein. The earlier/first claim has been made

by the 1st claimant in M.C.O.P.No.136 of 2017 and, therefore, the 1st claimant would be entitled to compensation and the subsequent claim filed by the 2nd claimant in M.C.O.P.No.137 of 2017 cannot be sustained and the award insofar as the 2nd claimant in MCOP No.137/2017 deserves to be set aside.

13. Insofar as the compensation awarded by the tribunal in favour of the 1st claimant is concerned, though the learned counsel for the claimants claim that the disability sustained by the 1st claimant is permanent and functional in nature and that the adoption of multiplier method by the tribunal is perfectly in order, however, the said contention cannot be accepted for the reasons that the extent of the disability would not really hamper the 1st claimant from discharging his work. Therefore, the adoption of multiplier method instead of percentage method by the tribunal is wholly erroneous and the same has to necessarily be interfered with.

14. Considering the Disability certificate, Ex.P20 and also taking into account the nature of injuries suffered by him and also the fact that the 1st

claimant was aged about 32 years at the time of accident and he is a flower merchant by profession, this Court confirms the disability sustained by the respondent at the rate of 55%. As the accident is of the year 2014 and as per the existing law at the relevant point of time, a sum of Rs.4,000/- has to be adopted per percentage of disability. Therefore, the amount under the head of Loss of earning capacity due to disability stands modified to a sum of Rs.2,20,000/- (Rs.4,000/- * 55 = Rs.2,20,000/-). Further, no compensation has been awarded under the head loss of income during the treatment period, hence, a sum of Rs.20,000/- shall be awarded under the said head.

15. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

16. In the above circumstances, the compensation awarded by the Tribunal in MCOP No.136 of 2017 is modified as under :-

Heads	**Awarded by the Tribunal (Amount in Rs.)**	**Awarded by this Court (Amount in Rs.)**
Loss of earning capacity	9,50,400/-	**2,20,000/- (reduced)**
Transportation	15,000/-	15,000/-
Nutrition charges	20,000/-	20,000/-
Attender charges	10,000/-	10,000/-
Pain and suffering	50,000/-	50,000/-
Discomfort, frustration and loss of social enjoyment	20,000/-	20,000/-
Medical bills	80,000/-	80,000/-
Future Medical expenses	20,000/-	20,000/-
Loss of income	**-**	**20,000/- (granted)**
Total	**Rs.11,65,400/-**	**Rs.4,55,000/-**

17. After reducing 10% for the negligence fixed on the part of the driver of the two wheeler, who is since deceased, the 1st claimant, viz., petitioner in MCOP No.136 of 2017 is entitled to receive a sum of Rs.4,09,500/- as compensation from the appellant/insurer.

18. Accordingly, the appeal in CMA.No.213 of 2020 filed as against the award passed in favour of the 2nd respondent is allowed, by setting aside the judgment and decree dated 25.07.2019 passed in M.C.O.P.No.137 of 2017. The appeal in CMA.No.215 of 2020 stands allowed in part and the impugned award passed by the tribunal stands modified by reducing the

compensation from **Rs.10,48,860/- to Rs.4,09,500/-**. The appellant is directed to deposit the above compensation awarded by this Court to the credit of M.C.O.P.No.136 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st claimant, viz., the petitioner in MCOP.No.136 of 2017 through RTGS within a period of two (2) weeks thereafter. Any amount deposited by the insurer insofar as MCOP No.137 of 2017 is concerned, the appellant/insurer is permitted to withdraw the same by filing necessary application. No costs. Consequently, the connected Miscellaneous petitions are closed.

07.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accident Claims Tribunal, (Additional District Judge)
   Hosur.

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

M.DHANDAPANI, J.

skt

C.M.A.Nos.213 & 215 of 2020
and
CMP.Nos.1628 & 1636 of 2020

07.12.2023