IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.09.2023

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THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2426 of 2018
and
C.M.P.No.18478 of 2018

United India Insurance Company Ltd.,
Branch Office,
No.22-B, P.R.Sundaram Iyer Street,
Dharmapuri – 636 701. ... Appellant

Vs.

1. Dhanabakkiyam

2. K.Vijayakumar

3. P.Sivaperumal ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the award and decree dated 24.04.2017 made in M.C.O.P.No.691 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.N.Desinghu

R2 and R3 : No appearance

JUDGEMENT

Appellant is the Insurance Company. The first respondent herein is the claimant, who filed the claim petition in M.C.O.P.No.691 of 2014 on the file of the Motor Accidents Claims Tribunal, Krishnagiri seeking compensation for the injuries sustained by her in a road accident.

2. Facts of the case are that, on 25.10.2013 at about 18-10 hours, the claimant was travelling in an auto-rikshaw bearing Registration No.TN-29-AB-8083 from Dharmapuri to Sekkarappatti. The driver of the auto has driven the auto in a rash and negligent manner, due to which, the auto capsized. As a result, the claimant along with other passengers, have sustained injuries. Hence the complaint.

3. After enquiry, the Tribunal has awarded a sum of Rs.3,40,000/- to the claimant. Challenging the Award passed by the Tribunal, the appellant/Insurance Company has filed the present appeal on two grounds. The first ground is that the driver of the auto had not

possessed any valid licence at the time of accident. If that be the case, there is violation of policy condition and hence, "pay and recovery" has to be ordered. The second ground is that the quantum fixed by the Tribunal is on the higher side.

4. Learned counsel for the appellant/Insurance Company submitted that the second and third respondents are the present and past owners of the offending vehicle respectively and there was no contract of insurance between the second respondent and the appellant/Insurance company at the time of accident. 11 persons have travelled in the auto at the time of accident. One of the passenger has given a complaint before the Police. Even in the F.I.R, it is stated that 11 persons were travelling in the Auto at the time of accident. Further, he submitted that the driver of the auto did not possess any valid driving license at the time of accident and the owner of the vehicle allowed the driver who did not posses valid license to ply the auto. Further, the sitting capacity of the auto is only two, whereas, more persons were allowed to travel in the auto. Hence, the second respondent violated the policy condition. Therefore, Insurance

company is not liable to pay the compensation. The Tribunal failed to consider the violation of policy condition and fixed the liability on the appellant, which warrants interference. The quantum fixed by the Tribunal is excessive and it does not reflect "just compensation". The award of Rs.75,000/- under the head "pain and suffering" is highly excessive and the award amount of Rs.75,000/- toward loss of amenities and enjoyment of live, is also highly excessive. Therefore, quantum of compensation has to be reduced and the Award passed by the Tribunal may be accordingly modified.

5. Learned counsel for the first respondent/claimant submitted that the appellant/Insurance company has not denied the manner of accident. He denied only the fact that 11 passengers were travelling in the auto at the time of accident. P.W.1, who is the claimant, has clearly stated in her evidence that only 4 persons were travelling in the Auto. The claimant is one of the passenger and she is a third party at the time of accident. The offending auto was insured with the appellant/Insurance company. Therefore, appellant has not denied the liability. Hence, the

Tribunal considered all the facts, and awarded "just compensation". There is no merit in the appeal and the same is liable to be dismissed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the offending auto bearing Registration No.TN.29-AB-8083 was involved in the accident. At the time of accident, the claimant was travelling in the auto. Though in the F.I.R, it is stated that 11 passengers were travelling in the auto at the time of accident, P.W.1 who is the claimant, has stated that only four persons were travelling in the auto at the time of accident. There are no materials or proof to find out and come to the conclusion that actually, four number of persons were travelling in the auto. P.W.1 is one of the passenger and who is also the eye witness, has stated that four persons were travelling in the auto. The investigating officer was not examined. In the absence of Investigation report or any other contra evidence, it cannot be taken as it is, whatever stated in the F.I.R since the F.I.R is not an "Encyclopaedia".

8. Learned counsel for the appellant/Insurance company has submitted that the driver of the auto had not possessed any valid driving licence at the time of accident. Respondents 2 and 3 are the present and past owners of the offending auto respectively. Neither the auto driver was impleaded in this case, nor he was examined as witness.

9. Learned counsel for the appellant/Insurance Company submitted that the auto stands in the name of the third respondent and policy has also been taken in the name of third respondent, whereas in the counter filed by them, they have stated that the second respondent was impleaded as unnecessary party. The third respondent only violated the policy conditions. Copy of the RC book has also not been marked. At the time of insurance, they might have handed over the copy of the RC book. They have not stated in the counter that the third respondent alone is the owner and he is the insured. Claimant is one of the passenger. It is not proved by the appellant that due to overload, the accident had occurred. The appellant admitted that the offending auto was insured with the appellant and also it was in live at the time of

accident. As the insurer, the appellant is liable to indemnify the loss caused to the injured/claimant. This Court finds that the accident had occurred in an unexpected manner and also due to rash and negligent driving of the driver of the auto. Since the appellant is the insurer of the offending vehicle, they are liable to pay the compensation.

10. As far as the quantum of compensation is concerned, claimant was examined as P.W.1. The Doctor who has issued the disability certificate to the claimant, was examined as P.W.3. The Doctor assessed the disability of the claimant at 55%. The Tribunal awarded Rs.3,000/- per percentage of the disability. The Tribunal has assessed the disability as 50% and awarded Rs.50xRs.3000/- = Rs.1,50,000/-. The Award amount under the head of "Pain and suffering" is hereby reduced to Rs.50,000 from Rs.75,000/-, taking into account the fact that the injury is bearable to the claimant. Similarly, Loss of amenities and enjoyment is reduced to Rs.50,000/- from Rs.75,000/-, Since the injuries are not grievous in nature and no proof or evidence had been produced to substantiate the same, even though the Doctor had assessed 55%

disability. In all other respects, the impugned Award of the Tribunal is confirmed.

11. Thus, this Court is inclined to modify the compensation awarded by the Tribunal as detailed hereunder:

Heads	*Amount awarded by the Tribunal (Rs.)*	*Award Amount by this Court (Rs.)*
Permanent disability(50%)	3,000 x 50 = 1,50,000	1,50,000
Medical, Transport, Nutrition and Attender Expenses	10,000	10,000
Pain and sufferings	75,000	50,000
Loss of Amenities and Enjoyment of life	75,000	50,000
Partial loss of income	Rs.30,000	30,000
Total	**3,40,000**	**2,90,000**

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is reduced from Rs.3,40,000/- to Rs.2,90,000/- with interest at the rate of 9% p.a. from the date of claim petition till the date of realisation.

(ii) The appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.2,90,000 /- along with interest at the rate of 9% per annum and costs as awarded by the Tribunal from the date of claim petition till the date of deposit, after deducting the amount already deposited, if any, to the credit of MCOP.No.691 of 2014 on the file of the Motor Accidents Claims Tribunal, Krishnagiri within a period of six weeks from the date of receipt of a copy of this Judgment.

(iii) The Tribunal is directed to refund the court fee if any to the appellant, and if so eligible.

(v) There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

20.09.2023

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

To

1. The Special Sub Judge
   Motor Accidents Claims Tribunal,
   Krishnagiri.

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

P.VELMURUGAN, J.

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