



C.M.A.No.1878 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1878 of 2021
and
Cross Objection No.70 of 2021
and
Civil Miscellaneous Petition No.10129 of 2021

C.M.A.No.1878 of 2021:

M/s. Universal Sampo General
Insurance Company Limited,
No.6, G-1, Cathedral Garden Rod,
Chennai – 600 034. ... Appellant/2nd respondent

Vs.

1. Natarajan ... Respondent/Petitioner
2. Periyasamy ... Respondent/1st Respondent

[R2 remained ex-parte before Tribunal.
Hence notice to R2 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Award and decree dated 18.01.2018
made in M.C.O.P.No.386 of 2017 on the file of the Motor Accidents Claims
Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant	:	Ms. R. Sree Vidhya
For R1	:	Mr. C. Thangaraju
For R2	:	No appearance



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Cross Objection No:70 of 2021:

1. Natarajan ... Cross Objector / 1st Respondent

vs.

1. Periyasamy ... Respondent / 2nd Respondent

2. M/s. Universal Sampo General
Insurance Company Limited,
No.6, G-1, Cathedral Garden Rod,
Chennai – 600 034. ... 2nd respondent / Appellant

Cross Objection filed under Order 41 Rule 22 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 18.01.2018 made in M.C.O.P.No.386 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Cross Objector : Mr. C. Thangaraju

For R1 : No appearance

For R2 : Ms. R. Sree Vidhya

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the direction of the Tribunal to indemnify the owner of the vehicle for payment of compensation awarded in M.C.O.P.No.386 of 2017, dated 18.01.2018, on the file of the Chief Judicial Magistrate, Namakkal.



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2. The case of the claimant is that on 14.06.2014 at about 5.50 p.m., he was riding his two-wheeler bearing Registration No. TN 28 Z 2407 (TVS XL Super) on the Kilsathampur to Perumalpalayam main road, while he reached near Sivan Koil, a Minidoor Goods Vehicle bearing Registration No. TN 28 AE 5781 driven by its driver came in the opposite direction in rash and negligent manner and hit on the two-wheeler, which resulted in causing severe injuries to the claimant and thereafter, he had admitted into various hospitals for treatment. In this regard, a criminal case was also registered in Crime No.144 of 2014 on the file of the Paramathi Police Station under Sections 279 and 337 of IPC, 1860 against the driver of the goods vehicle. After discharged from the hospital, he filed claim petition claiming compensation of Rs.15,00,000/-.

3. Before the Tribunal, the claimant examined himself as P.W.1. The Doctor who had assessed the disability sustained by the claimant and issued Disability Certificate was examined as P.W.2, and Exhibits marked. R.W.1 was also examined on the side of the Insurance Company to support their case that the driver of the minodoor vehicle was not having



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valid driving licence.

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4. Based on the evidences placed on record, the Tribunal in Point No.1 has held that the driver of the goods vehicle is responsible for the accident and in Point No.2 has held that there is no violation of policy condition and in Point No.3 the Tribunal has quantified the compensation and awarded a sum of Rs.2,90,600/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation.

5. The Insurance Company has filed this appeal on the ground that the Tribunal has failed to consider the contention of the Insurance Company that there is a violation of policy condition that the driver of the goods vehicle was not having valid driving licence. Since, there is a violation of policy condition, the Insurance Company is not liable to pay the compensation and prays to absolve them from liability.

6. The claimant has also filed Cross Objection No.70 of 2021



seeking enhancement of compensation on the ground that the Tribunal has not properly awarded compensation under the head disability and prays to enhance the same.

7. On perusal of the Award, it shows that eventhough the Insurance Company has come forward to examine their official who deposed that there is no valid driving licence of the driver of the goods vehicle, they have not chosen to examine any official for Regional Transport Authority to show that the driver of the first respondent vehicle was not having valid driving licence. This Court in catena of Judgments held that examination of officers of the Regional Transport Office (RTO) is necessary to prove the possession or non-possession of the valid driving licence. In this case, no witness has been examined on the side of the Insurance Company to substantiate their claim that the driver of the goods vehicle was not having valid driving licence. In the absence of any evidence, the Tribunal has rightly held that the Insurance Company has failed to prove their case that there is a violation of policy condition.



8. The learned counsel for the claimants has submitted that the quantum of compensation awarded under various heads are also on the lower side and prays to modify the same.

9. On perusal of Ex.P12 - Disability Certificate, it shows that the claimant has sustained fracture on the left femur which resulted in restricted movement of his left hip, left knee and surrounding areas. He was originally admitted into the CM Hosital, Namakkal as in-patient and undergone in-patient treatment for 14 days and discharged subsequently. Based on the exhibits, Discharge Summary and Treatment Records, P.W.2 has assessed the disability as 40% and this Court is of the view the same is proper. The Tribunal after accepting the disability, has held that the injuires sustained by the claimant is not a functional disability and it is only a partial permanent disability. This Court is of the view that there is no infirmity in such finding and there is no ground for enhancing the same. Similarly, the Tribunal has awarded compensation for the head loss of income during treatment period, Transport Expenses, Extra Nourishment and Pain and Sufferings and the award also shows that the Tribunal has granted Rs.3,000/- per percentage of injury and this Court is of the view the same is



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proper.

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10. After considering the above facts, this Court is of the view that the Tribunal has properly appreciated the evidences and awarded compensation is just and reasonable and the same requires no interference by this Court. Accordingly, the Civil Miscellaneous Appeal and Cross Objection is liable to be dismissed.

11. In the result, this Civil Miscellaneous Appeal filed by the Insurance Company and the Cross Objection filed by the claimant is hereby dismissed. The Award passed by the Tribunal in M.C.O.P.No.386 of 2017, dated 18.01.2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Namakkal.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K.RAJASEKAR,J.

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