



C.M.A.(MD).No.1114 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1114 of 2017

and

C.M.P(MD) No.11321 of 2017

The United Insurance Company, Ltd.,
Represented by its Branch Manager,
Branch Office,
Nagercoil.

... Appellant/3rd Respondent

-vs-

1. Francis (died)

... 1st Respondent/Claimant

2. Abilash

3. Navinkumar Singh

... Respondents 2 and 3/
Respondents 1 and 2

(Respondents 2 and 3 stood exparte
before the Tribunal)

4. Mariasornam

5. Maria Stella

6. Maria Chakkian

7. Thanga Leela

8. Mohan

... Proposed Respondents

(Respondents 4 to 8 are brought on record
as Legal Heirs of deceased R1 vide order of
this Court dated 16.03.2017 made in C.M.P
(MD) No.10737 to 10739 of 2016 in C.M.A
(MD)SR25706 of 2013)



C.M.A.(MD).No.1114 of 2017

WEB COPY

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.25 of 2010, on the file of the Motor Accident Claims Tribunal, (Sub Judge), Padmanabhapuram, dated 19.11.2012.

For Appellant : Mrs.Vijayakumari Natarajan
for Mr.M.Sudharan

For Respondents : No appearance

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal, (Sub Judge), Padmanabhapuram, made in M.C.O.P.No.25 of 2010 primarily on the ground of negligence and quantum.

2. According to the injured claimant, while he was walking on the road on 01.11.2009, at about 04.00 p.m., a two wheeler driven by the first respondent in a rash and negligent manner dashed against him. In the said accident, the claimant had sustained grievous injuries. According to the claimants, the second respondent is the owner of the vehicle and the third



C.M.A.(MD).No.1114 of 2017

respondent is the insurer of the said offending vehicle. The claimant has prayed for a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as compensation.

3. The Insurance Company had filed a counter contending that the driver of the two wheeler was not having any valid driving license and therefore, they are not liable to pay any compensation.

4. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent vehicle. The Tribunal further found that the claimant is entitled to receive a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards disability of 15%. The Tribunal further awarded a sum of Rs.40,000/- (Rupees Forty Thousand only) towards four grievous injuries, a sum of Rs.1,000/- (Rupees One Thousand only) was awarded for one simple injuries, a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and sufferings, a sum of Rs.10,000/- (Rupees Ten Thousand only) towards extra nourishment, a sum of Rs.5,000/- (Rupees Five Thousand only) towards transportation charges, a



C.M.A.(MD).No.1114 of 2017

sum of Rs.85,016/- (Rupees Eighty Five Thousand and Sixteen only) towards medical expenses, a sum of Rs.4,600/- (Rupees Four Thousand and Six Hundred only) towards loss of income during the hospital treatment period, a sum of Rs.4,600/- (Rupees Four Thousand and Six Hundred only) towards attendar charges, a sum of Rs.36,000/- (Rupees Thirty Six Thousand only) towards loss of income further period of six months and a sum of Rs.2,000/- (Rupees Two Thousand only) towards damages for clothes and other articles. Totally, a sum of Rs.2,43,216/- (Rupees Two Lakhs Forty Three Thousand Two Hundred and Sixteen only) has been awarded. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant/ Insurance Company, after awarding a sum of Rs.30,000/- towards 15% disability and also a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards pain and sufferings, the Tribunal was not right in awarding a sum of Rs.40,000/- for four grievous injuries and a sum of Rs.1,000/- for one simple injury. She had further contended that once the Tribunal has arrived at a finding that the driver of the offending vehicle was not having any driving license at the relevant point of time, the Insurance Company has to be



C.M.A.(MD).No.1114 of 2017

exonerated and thereby, the order of pay and recovery should not have been passed. Hence, she prayed for allowing the appeal.

6. Though the claimants have been served, they have not chosen to appear either in person or through their counsel.

7. I have carefully considered the submissions made by the learned counsel for the appellant.

8. As far as the quantum of award is concerned, the Tribunal after awarding a sum of Rs.30,000/- (Rupees Thirty Thousand only) under the head of disability could not have awarded another sum of Rs.40,000/- (Rupees Forty Thousand only) for four grievous injuries and a sum of Rs.1,000/- (Rupees One Thousand only) for one simple injury. Therefore, the award relating to the extent of a sum of Rs.41,000/- is liable to be set aside. In other respects, the award of the Tribunal stands confirmed.

9. As far as the plea for exonerating the Insurance Company is concerned, in the present case, admittedly, the driver of the two wheeler was



C.M.A.(MD).No.1114 of 2017

not having any driving license at the relevant point of time and it is only a breach of policy condition. In the case of breach of policy condition, the Hon'ble Supreme Court has specifically held that the Insurance Company has to deposit the award amount and satisfy the award and thereafter, recover the same from the owner of the vehicle. Therefore, this Court is inclined agree with the award of the Tribunal with regard to the pay and recovery.

10. In view of the above said deliberations, the award of the Tribunal is modified as follows:

For 15% Disability	: Rs.30,000/-
Pain and Sufferings	: Rs.25,000/-
Extra Nourishment	: Rs.10,000/-
Transport Expenses	: Rs. 5,000/-
Medical Expenses	: Rs.85,016/-
Loss of income during the Hospital treatment period	:Rs. 4,600/-
Attendar charges	: Rs. 4,600/-
Loss of income further period of six months	: Rs.36,000/-
For damages to cloths and other articles	: <u>Rs. 2,000/-</u>
Total	: Rs.2,02,216/-



C.M.A.(MD).No.1114 of 2017

WEB COPY

11. Therefore, the award of the Tribunal is hereby modified and reduced from Rs.2,43,216/- to Rs.2,02,216/- (Rupees Two Lakhs Two Thousand Two Hundred and Sixteen only) and the said amount will carry interest at the rate of 7.5% per annum from the date of the claim petition.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

27.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The Motor Accidents Claims Tribunal,
(Sub Judge), Padmanabhapuram.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.1114 of 2017

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.1114 of 2017



WEB COPY



C.M.A.(MD).No.1114 of 2017

27.06.2023