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C.M.A. No.3059 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.3059 of 2021

and

Cross Objection Nos.1 and 8 of 2022

and

C.M.P. No.25598 of 2023

and

C.M.P. No.17539 of 2021

M/s. National Insurance Company Ltd.
Branch Office – III,
Thanthai Periyar Market Complex,
Salem – 636 001.

... Appellant in
C.M.A. No.3059 of 2021
and
1st respondent in
Cross Objection No.1 of 2022
and
Cross Objection No.8 of 2022

VS.

1. Kartheekeyan

.... 1st respondent in
C.M.A. No.3059 of 2021
and
Cross Objector in
Cross Objection No.1 of 2022
and
2nd respondent in
Cross Objection No.8 of 2022



C.M.A. No.3059 of 2021

2. Sudhakar
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.... 2nd respondent in
C.M.A. No.3059 of 2021 and
in Cross Objection
No.1 of 2022
and
Cross Objector in
Cross Objection No.8 of 2022

Prayer in C.M.A. No.3059 of 2021 : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in MACT.O.P. No.70 of 2013, dated 21.08.2017 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.1, Salem.

Prayer in Cross Objection No.1 of 2022 : Cross Objection has been filed under Order 41 Rule 22 of CPC for enhancement of the compensation awarded in the judgment and decree dated 21.08.2017 made in M.C.O.P. No.70 of 2013 on the file of Motor Accident Claims Tribunal / Special Subordinate Court No.1, Salem.

Prayer in Cross Objection No.8 of 2022 : Cross Objection has been filed under Order 41 Rule 22 of CPC r/w Section 173 of Motor Vehicles Act, to set aside the decree and judgment passed against this Cross Objector (owner of the vehicle) for pay and recover in MCOP No.70 of 2013, dated 21.08.2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court No.1, Salem.



C.M.A. No.3059 of 2021

WEB COPY

Appellant in
C.M.A. No.3059 of 2021
/ 1st respondent in
Cross Objection No.1 of 2022 and
Cross Objection No.8 of 2022 : Ms.N.B.Surekha
1st respondent in
C.M.A. No.3059 of 2021 /

Cross Objector in
Cross Objection No.1 of 2022 /
2nd respondent in
Cross Objection No.8 of 2022 : Mr.S.P. Yuvaraj

2nd respondent in
C.M.A. No.3059 of 2021 and
in Cross Objection
No.1 of 2022 /
Cross Objector in
Cross Objection No.8 of 2022 : Mr.V. Sekar

COMMON JUDGMENT

The issues involved in all the aforementioned matters arise out of the very same accident and hence, they are disposed of, by a common judgment.

2. C.M.A. No.3059 of 2021 has been filed by the Insurance Company questioning the quantum of compensation awarded by the Tribunal under the impugned award. According to them, the



C.M.A. No.3059 of 2021

compensation awarded by the Tribunal to the respondent / claimant is excessive.

3. During the pendency of this appeal, C.M.P. No.25598 of 2023 has been filed by the 2nd respondent, who is the owner of the vehicle seeking leave of this Court under 41 Rule 27 and Section 151 of CPC, for reception of the additional document viz., the Driving Licence standing in the name of S. Janarthanan (2nd respondent's father). The Driving Licence of S. Janarthanan has been filed as an additional document by the 2nd respondent for the purpose of his contention that the Tribunal ought not to have granted pay and recovery rights to the appellant / Insurance Company, under the impugned award, since on the date of the accident, S.Janarthanan (Driver of the vehicle) was possessing a valid Driving Licence.

4. The learned counsel for the petitioner in C.M.P. No.25598 of 2023 has also produced before this Court the original Driving Licence standing in the name of S. Janardhanam.

5. Cross Objection No.1 of 2022 has been filed by the respondent / claimant seeking for enhancement of compensation as according to the respondent / claimant, the compensation awarded by the Tribunal is not a just compensation and it is inadequate.



C.M.A. No.3059 of 2021

6. Cross Objection No.8 of 2022 has been filed by the 2nd respondent, who is the owner of the vehicle, insured with the appellant / Insurance Company.

7. Admittedly under the impugned award, pay and recovery rights has been granted to the appellant / Insurance Company by directing them to pay the award amount to the respondent / claimant and recover the same thereafter from the 2nd respondent, who is the owner of the vehicle. The 2nd respondent had remained ex-parte before the Tribunal. Only in this appeal, he has entered appearance and has filed Cross Objection No.8 of 2022 stating that on the date of the accident, the driver of the vehicle was possessing a valid driving licence and therefore according to him, the Tribunal has erroneously granted pay and recovery rights to the appellant / Insurance Company. The Original Driving Licence has also been produced by the 2nd respondent before this Court, though the same is disputed by the appellant / Insurance Company who has produced a different driving licence which will reveal that as on the date of the accident, the driver of the vehicle was not possessing a valid driving licence. However, the learned counsel for the 2nd respondent would submit that the original driving licence is a valid driving licence and it



C.M.A. No.3059 of 2021

was in force as on the date of the accident and therefore, the Tribunal has committed an error in granting pay and recovery rights to the appellant / Insurance Company.

8. The learned counsel appearing for the respondent /claimant would also submit that the quantum of compensation awarded by the Tribunal under the impugned award is inadequate and is not a just compensation and it has to be enhanced. However, the same is disputed by the learned counsel for the appellant / Insurance Company, who would submit that the quantum of compensation awarded by the Tribunal under the impugned award is excessive and it has to be reduced.

9. Since the Driving Licence of S.Janarthanan has been produced by the 2nd respondent(owner) for the first time, before this Court, and the same was not placed on record before the Tribunal and the Tribunal has also granted pay and recovery rights to the appellant / Insurance Company on the ground that on the date of the accident, the driver of the vehicle was not possessing a valid driving licence and in view of the fact that the 2nd respondent (owner) had remained ex-parte before the Tribunal, this Court deems it fit to remand the matter back to the Tribunal for fresh consideration on merits and in accordance with law by



C.M.A. No.3059 of 2021

permitting all the parties to adduce additional oral and documentary evidence in support of their respective contentions and in the interest of all the parties, it is also just and necessary to give a direction to the Tribunal to dispose of the claim, within a stipulated time as fixed by this Court.

10. In the result, the impugned award of the Tribunal, dated 21.08.2017 passed in MACT. O.P. No.70 of 2013 is hereby set aside and this Civil Miscellaneous Appeal is disposed of by remanding the matter back to the very same Tribunal for fresh consideration on merits and in accordance with law, by permitting all the parties to let in additional oral and documentary evidence to substantiate their respective contentions, which they have raised before this Court in this appeal and the Tribunal is directed to dispose of the claim filed by the respondent / claimant, within a period of four months from the date of receipt of a copy of this order.

11. Since the impugned order, dated 21.08.2017 is set aside by this Court, Cross Objection No.1 of 2022 filed by the claimant and Cross Objection No. 8 of 2022 filed by the owner of the vehicle are also disposed of.

12. No costs. Consequently, connected miscellaneous petitions are closed.



C.M.A. No.3059 of 2021

13. The learned counsel for the claimant / Cross Objector in Cross
Objection No.1 of 2022 seeks permission for refund of Court Fees.

Accepting the said contention, this Court directs the Registry to refund
the Court fees paid by the claimant / Cross Objector in Cross Objection
No.1 of 2022.

03.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To

1. The Special Subordinate Judge No.1,
Motor Accidents Claims Tribunal,
Salem.

2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.



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C.M.A. No.3059 of 2021

ABDUL QUDDHOSE, J.

vsi2

C.M.A. No.3059 of 2021
and
Cross Objection Nos.1 and 8 of 2022
and
C.M.P. No.25598 of 2023

03.07.2024