IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.369 of 2023

The United India Insurance Company Limited
Tiruppur 641601

Appellant

Vs

1.Rajamohan
2.Iyyappan
3.Palanisamy

Respondents

Prayer:~ This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 10.02.2022, made in MCOP.No.606 of 2017, by the Special Motor Accidents Claims Tribunal (MACT) Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.Ma.P.Thangavel~R1
RR2 and 3~No Appearance

JUDGEMENT

1.This Civil Miscellaneous Appeal has been filed, by the Appellant Insurance Company, against the judgement and decree, dated, 10.02.2022, made in MCOP.No.606 of 2017, by the Special Motor Accidents Claims Tribunal (MACT) Tiruppur.

2.The above claim petition has been filed by the 1st Respondent herein, before the Tribunal, seeking a compensation of Rs.20,00,000/~, on various heads, for the injuries sustained by him, in a motor road accident, which had happened on 26.02.2017. The claim petition was resisted by the Appellant Insurance Company, by filing a counter. As per the claim petition, the Respondents 2 and 3 are the driver and owner of the offending vehicle respectively and they remained exparte before the Tribunal. On the side of the claimant, PW.1 and PW.2 were examined and Ex.P1 to Ex.P5 were marked. On the side of the Appellant Insurance Company, RW.1 and RW.2 were examined and Ex.R1 and R2 were marked. Ex.C1 was marked.

3.Finding that at the time of the accident, the 3rd Respondent, who is the owner of the offending vehicle, insured with the Appellant Insurance Company, was the driver of the offending vehicle and that the accident had occurred only due to his rash and negligent driving, the Tribunal has awarded a total compensation of Rs.17,18,848/~, on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be payable by the Appellant Insurance Company, as detailed below:~

S.No	***Category***	***Award Amount (Rs.)***
1	Loss of Income	1360800
2	Medical Expenses	258048
3	Pain and Suffering	30000
4	Extra Nourishment	20000
5	Transportation Expenses	10000
6	Attendants Charges	20000
7	Loss of Amenities	20000
	Total Compensation	1718848

Aggrieved by the same, this Civil Miscellaneous Appeal has been filed by the Appellant Insurance Company.

4.In spite of service of notice, the Respondents 2 and 3 have not entered appearance either through counsel or in person. This Court heard the learned counsel for the Appellant Insurance Company and the contesting 1st Respondent, considered their submissions and also perused the entire materials placed on record.

5.Since there is no quarrel over the manner, in which the accident had occurred and negligence aspect and as the dispute is only with regard to the quantum of compensation and liability issue and also as to who was the driver at the time of the accident, the findings of the Tribunal with respect to the manner of the accident and negligence aspect alone are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.

6.With regard to the issue of fastening entire liability on the part of the Appellant Insurance Company, it is the contention of the Appellant that the 3rd Respondent Palanisamy, who is the owner of the offending vehicle, gave the complaint under Ex.P1, stating that the 2nd Respondent Iyappan was the driver of the offending vehicle at the time of the accident, however, Ex.R1 charge sheet was filed by RW.1, stating that at the time of the accident, the offending vehicle was driven only by the 3rd Respondent, who was the owner of the offending vehicle and he was responsible for the accident. The learned counsel would further submit that when the owner of the offending vehicle himself gave the complaint, stating that at the time of the accident the 2nd Respondent only drove the offending vehicle and caused the accident, all of a sudden, strangely, stating in Ex.R1 charge sheet, that the 3rd Respondent was the driver of the offending vehicle creates a great suspicion about the genuineness of same and hence, Ex.R1 is not believable and sustainable.

7.The learned counsel for the Appellant Insurance Company would further submit that the 2nd Respondent was not having a valid driving licence and that there is no proof to show that he possesses a valid driving licence and hence, it would amount to violation of policy conditions and that only in order to escape from the liability due to violation of policy conditions, in criminal conspiracy with the 3rd Respondent, RW.1, filed the charge sheet, Ex.R1, falsely stating as if the 3rd Respondent, who is the owner of the offending vehicle, was the driver, at the time of the accident and hence, Ex.R1 is to be rejected and that therefore, fastening entire liability against the Appellant Insurance Company is not proper and that even in a case where anybody drove the vehicle without any valid licence, in general, the theory of pay and recovery ought to be applied.

8.In this regard, the learned counsel for the 1st Respondent/ claimant would contend that initially, the complaint under Ex.P1 was given by the owner of the offending vehicle, the 3rd Respondent, stating that Iyappan, the 2nd Respondent was the driver of the offending vehicle, however, in Ex.R1 charge sheet, the 3rd Respondent was shown as the accused person, who drove the vehicle at the time of the accident and that considering Ex.R1 only, the Tribunal came to the right conclusion that the 3rd Respondent possessed a valid driving licence and he was the driver of the vehicle and accordingly, fastened liability on the Appellant Insurance Company and hence, the impugned judgement and decree is sustainable.

9. The injured claimant, as PW.1, in his oral evidence before the Tribunal, while stating no knowledge about Ex.P1 First Information Report, has deposed that the 3rd Respondent was the driver, at the time of the accident. When the owner of the offending vehicle, 3rd Respondent himself gave the complaint, stating as if the 2nd Respondent was the driver of the offending vehicle, the evidence of PW.1 in this regard cannot be sustained and it is a false evidence. All these aspects have not been considered by the Tribunal.

10.As per the directions of this Court, directing the injured claimant to appear before this Court in person in order to ascertain the disability suffered by him and also as to the person who drove the vehicle at the time of the accident, he appeared in person before this Court today. It is noticed that while walking he is limping. ?The claimant made a statement in the open Court that he married three years ago and has a male child. He has also made a statement in the open Court that Iyappan, 2nd Respondent was the driver of the offending vehicle at the time of the accident and that only due to his rash and negligent driving, the accident had happened and that the 3rd Respondent, Palanisamy is the owner of the offending vehicle and he was at home at the relevant point of time?. This statement of the claimant made before this Court runs contrary to the evidence adduced by him before the Tribunal, which appears to be very natural and it is proved that the claimant has been tutored as to how to depose falsely before the Tribunal. Hence, his statement made before the Tribunal is rejected as not trustworthy. Therefore, it can be held that he gave false evidence before the Tribunal and accordingly, the same is rejected.

11.It was also contended before the Tribunal that the 2nd Respondent, who actually drove the offending vehicle as per the First Information Report Ex.P1, was not having a valid driving licence and there is also no proof to show that he possesses a valid driving licence. RW.1, the concerned Special Sub Inspector of Police, who filed the charge sheet, has not conducted investigation properly and filed the charge sheet in favour of the 3rd Respondent, in criminal conspiracy with the 3rd Respondent owner of the offending vehicle, only in order to avail the benefit of insurance claim and to avoid any recovery from him as the owner of the offending vehicle.

12.Since the Appellant Company suspected the implication of the owner Palanisamy, the 3rd Respondent as the driver of the offending vehicle, they have filed this appeal. Today, the statement of the injured claimant is also recorded in the open court, as stated above. He stated that Palanisamy was the owner of the offending vehicle and he was at home at the time of the accident and hence, it is clear that the 2nd Respondent was the driver of the offending vehicle. When these were actual facts, against the truth and in order to grant insurance claim benefits to the owner of the vehicle and to avoid recovery from the owner, the owner of the offending vehicle as well as RW.1 conspired together and a false charge sheet came to be filed. This Court is of the opinion that they have committed criminal offence and they have to be prosecuted in accordance with law, apart from taking departmental action independently against RW.1, Meganathan, who filed the charge sheet falsely.

13.In the absence of evidence to prove that the 2nd Respondent Iyappan was having a valid driving licence at the time of the accident, it can be safely held that he was not having a valid driving licence. In Ex.P1 First Information Report, it has been categorically stated as to how the accident had happened and described about Iyappan as the driver and Palanisamy as the owner. Though RW.1 has admitted that it was the 2nd Respondent, who drove the offending vehicle as per Ex.P1, however, against the truth as stated in Ex.P1, with a mala fide intention to benefit the owner, both the owner and RW.1 conspired together and a false charge sheet was filed.

14.It is also seen that the claimant has also deposed in lines with the evidence of RW.1, stating that the 3rd Respondent owner of the offending vehicle was the driver of the offending vehicle. But, the statement given by him in person before this Court, as stated above, is quite contrary to his oral evidence adduced before the Tribunal and hence, his oral evidence given as PW.1 is unbelievable. Hence, it can be held that the claimant also colluded with the owner along with concerned police personnel in order to benefit the owner.

15.Under the above circumstances, this Court has no option except to go by the version as stated in the complaint First Information Report Ex.P1 given at the first instance, by the owner of the offending vehicle, based on which the charge sheet Ex.R1 was filed by RW.1 and the statement made by the claimant today before this Court as narrated above. Further, in spite of service of notice, the Respondents 2 and 3 have not entered appearance through counsel or in person.

16.The reason for showing the 3rd Respondent, owner of the offending vehicle as the driver of the offending vehicle at the time of the accident is that since there was no proof to show that the 2nd Respondent, who drove the offending vehicle as per the complaint, was not having a valid driving licence, the 3rd Respondent, as the owner, would be fastened with liability for violation of the policy conditions. Only in order to grant the insurance benefits to the owner and to escape from the recovery liability, the 3rd Respondent was shown as the driver, as having valid driving licence. Since it is held by this Court that the 2nd Respondent, who did not possess a valid driving licence, drove the offending vehicle at the time of the accident and thereby, the 3rd Respondent has violated the policy conditions, the findings of the Tribunal fastening entire liability on the Appellant Insurance Company is to be modified into one for pay and recovery.

17.However, the fact remains that as per the medical records, the injured claimant sustained fracture on his right leg and he has also made a wrong statement before the Tribunal. Only to avoid pay and recovery, this conspiracy was made between them, namely, owner, claimant and RW.1, who filed the false charge sheet under Ex.R1. Even before this Court, the Respondents 2 and 3 did not appear and they played fraud as narrated above.

18.However, since the claimant has sustained injuries, he is entitled to the insurance claim benefits and whatever the compensation this Court arrives at by this order is to be recovered from the 3rd Respondent owner of the offending vehicle, for violation of policy conditions. Hence, the Appellant Insurance Company is liable to pay first whatever the compensation arrives at by this Court with interest to the claimant and then, recover the same from the owner of the offending vehicle, namely, the 3rd Respondent.

19.Now coming to the question of quantum of compensation, according to learned counsel for the Appellant Insurance Company, the claimant sustained only a fracture on his right let and the Medical Board assessed the permanent disability at 70% and the Tribunal fixed the same at 50%. Even for a person, who suffered amputation of one leg, the permanent disability would be 60% as per the Workmen Compensation Act and hence, 70% permanent disability assessed by the Medical Board and 50% permanent disability fixed by the Tribunal are on the higher side. However, the learned counsel fairly submitted that 1/3rd of 70%, i.e. 24% is the reasonable functional disability with respect to the whole body and in all other respects, the compensation amounts awarded under other heads are proper.

20.On the other hand, the learned counsel for the 1st Respondent/claimant would submit that for the fracture on his right leg and when he is limping while walking, 40% disability may be determined, while taking Rs.9000/~ p.m. as his monthly income.

21.As rightly contended by the learned counsel for the Appellant, even in a case of amputation of one leg, the normal disability would be 60%. In this case, the claimant suffered only a fracture on his right leg. On interacting with the injured claimant in the open Court, it is seen that he is limping while walking and for this injury, even 50% disability as fixed by the Tribunal is on the higher side and hence, it would appropriate to fix the same at 24%.

22.According to the claimant, the accident had happened in the year 2017 and he was aged 21 years old at the time of the accident and earning a sum of Rs.10,000/~ p.m. However, the Tribunal fixed the notional monthly income of the claimant at Rs.9000/~, which is reasonable.

23.While computing the compensation for the disability suffered by the claimant, it is the functional disability resulting in loss of earning capacity, which is the criteria in assessing compensation and accordingly, we have to assess the functional disability with respect to the whole body. In this case, this court is of the considered view that the claimant has sustained 24% functional disability in respect of the whole body. This Court is also inclined to add 40% towards future prospects, which is not considered by the Tribunal.

24.Taking the multiplier of 18 as rightly adopted by the Tribunal, the loss of future earnings due to the disability would come to Rs.6,53,184/~(Rs.9000+3600x24/100x12x18). The compensation amounts awarded under the other heads are just and reasonable and hence, they are confirmed. In all, the claimant is entitled to a total compensation of Rs.10,11,232/~, with interest 7.5% p.a. from the date of the claim petition till the date of realisation

25.In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.10,11,232/~ (Rupees ten lakhs eleven thousand two hundred and thirty two only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:~

S.No	***Category***	***Award Amount (Rs.)***
1	Loss of Income	653184
2	Medical Expenses	258048
3	Pain and Suffering	30000
4	Extra Nourishment	20000
5	Transportation Expenses	10000
6	Attendants Charges	20000
7	Loss of Amenities	20000
	Total Compensation	1011232

26.The Appellant / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the entire compensation amount, with interest due, directly to the bank account of the claimant, within a period of three weeks thereafter. Thereafter, the Appellant Insurance Company is entitled to recover the entire award amount with interest from the 3rd Respondent, owner of the offending vehicle, in accordance with law, in view of the categoric findings of this Court that the driver of the offending vehicle did not possess a valid driving licence at the time of the accident, thereby violated the terms and conditions of the insurance policy, which is not assailed or impeached by him.

27.If the Appellant Insurance Company had already deposited the entire award amount with interest, since the impugned compensation is reduced as stated above, after withdrawal of the compensation amount arrived at by this Court by the claimant, the Appellant Insurance Company is permitted to withdraw the balance amount with accrued proportionate interest.

28.In view of the findings of this Court that a false charge sheet was filed by the RW.1, Meganathan, the Special Sub Inspector of Police, in collusion with the owner of the offending vehicle, 3rd Respondent and the claimant, this Court directs the concerned Superintendent of Police, under whom, RW.1, Meganathan worked, to take appropriate departmental action against RW.1, in accordance with law. It is also needless to say that such action is also to be taken against the persons, who are all involved in this accident, in accordance with law. No costs.

29.The Registry is directed to post the matter for reporting compliance by the Superintendent of Police, Tiruppur, on 24.09.2024.

20.03.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
Srcm

To

1.The Special Motor Accidents Claims Tribunal (MACT) Tiruppur.
2.The Superintendent of Police, Tiruppur
3.The Record Keeper, VR Section, High Court, Madras

KRISHNAN RAMASAMY, J.
Srcm

CMA.No.369 of 2023

20.03.2024