IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.1891 of 2021
and CMP.Nos.10226 & 8711 of 2021

The Oriental Insurance Company Limited
100 Feet Road,
Mudaliarpet, Puducherry. ... Appellant

Vs.

1. Vijaya
2. Durai
3. Murugan ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 16.04.2018 made in M.C.O.P. No.771 of 2012 on the file of Motor Accident Claims Tribunal, Puducherry.

For Appellants : Mr.Elveera Ravindran

For Respondents : Notice served to R1 & R3

Mr.C.Vidhesan for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company/3rd respondent to set aside the decree and judgment dated 16.04.2018 passed in M.C.O.P.No.771 of 2012 on the file of the Motor Accidents Claims Tribunal, Puducherry.

2. The appellant is the third respondent in claim petition and 1st respondent is the claimant, 2nd and 3rd respondents are owner and driver of the vehicle respectively. The claimant has filed the said claim petition, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by her in the accident that took place on 18.09.2012. The parties herein are referred as per their litigative status before the claims Tribunal.

3. Brief facts of the case is that:-

On 18.09.2012 at 10:00 a.m. the petitioner was travelling along with

Neelavathy, Valli and Saroja as a passenger in an Auto bearing Registration No.PY 01 U 6612, the said Auto was driven by one Maharajan from Pondicherry to Thiruvandar Koil in Pondy Villupuram main road at M.N.Kuppam near Aj work shop. At that time a bus came in an opposite direction and the driver of the Auto negligently stopped extreme left to avoid hitting the bus resulted in capsizing of Auto. Due to which the petitioner sustained multiple injuries all over her body. Immediately she was taken to the Government Hospital and undergone treatment. The petitioner was earning Rs.15,000/- p.m by doing manual labour and lost earning capacity. Hence the claimant claimed compensation of Rs.5,00,000/- before the Tribunal for the injuries and disability sustained by her.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the driver of the Auto is responsible for the accident, appellant as insurer of the Auto is liable to pay the compensation to the second respondent and awarded a sum of Rs.1,10,000/- as compensastion to the first respondent.

5. Appeal has been filed by the Insurance Company challenging the liability fixed on them to indemnify the 2nd respondent who is the owner of the vehicle. It is submitted by the appellant that the compensation awarded under the head pain and suffering is on the higher side and that there was violation of policy conditions and the same has been proved before the Tribunal but the Tribunal has wrongly directed the Insurance Company to indemnify the owner of the vehicle namely the 2nd respondent.

6. This appeal has been resisted by the claimant on the ground that the compenstion awarded under various heads are just compensation and no need for reduction of the same.

7. It is also an admitted fact that there is a violation of policy conditions that 5 persons travelled in the Auto which is more than the seating capacity as per the permit. The Registration Certificate of the Auto also

marked as Ex.P4 and as per the seating capacity only three persons are allowed to travel in the vehicle. In this case four persons travelled as a passenger and it is a clear case of violation of statutory provisions and policy conditions. The Hon'ble Supreme Court in the case of ***United India Insurance Co.Ltd., Vs K.M.Poonam and others*** reported in [2011 (101) AIC 194], has held that when there is a violation of policy condition with regard to seating capacity then the Tribunal shall award compensation by adopting the principles of pay and recovery. The Tribunal has not adverted into the objection raised by the Insurance Company regarding the violation of policy conditions as discussed supra. This Court is of the view that Insurance Company has proved their case that there is a violation of policy condition as stated supra. Considering the ratio laid down by the Hon'ble Supreme Court in the case of ***United India Insurance Co.Ltd., Vs K.M.Poonam and others*** reported in [2011 (101) AIC 194], the Insurance Company shall pay the compensation and recover the same from the second respondent namely Murugan.

8. As far as the quantum of compensation, only grievance raised by the

Insurance Company is that the amount awarded under the head Pain and Suffering is on the higher side. The disability certificate issued to the claimant states that petitioner has sustained fracture of 3rd metacarpal and the disability was assessed to the extent of 5%. Accordingly, the compensation under the head disability has been awarded. However, the Tribunal has awarded Rs.40,000/- under the head Pain and Suffering. The accident took place in the year 2012 injury sustained is metacarpal fracture which was treated conservatively and discharge summary of the claimant was not marked to show that any surgery has been taken place or not. This Court is of the view that Rs.40,000/- awarded by the Tribunal is on the higher side and the same is reduced to Rs.20,000/-. The compensation awarded by the Tribunal under other heads is a just compensation and the same is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Partial permanent disability (5 x 3000)	15,000/-	15,000/-	Confirmed
2.	Pain and sufferings	40,000/-	20,000/-	Reduced
3.	Medical expenses	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Transport expenses	10,000/-	10,000/-	Confirmed
5.	Attender Charges	10,000/-	10,000/-	Confirmed
6.	Loss of income	15,000/-	15,000/-	Confirmed
	Total	1,10,000/-	90,000/-	

9. In the result, this appeal filed by the appellant / Insurance Company stands partly allowed by reducing the compensation from Rs.1,10,000/- to Rs.90,000/- as stated supra. The appellant / Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.771 of 2012 on the file of the Motor Accidents Claims Tribunal,

Puducherry. On such deposit, the 1st respondent / claimant is permitted to withdraw the award amount now determined by this Court, by filing appropriate application before the Tribunal. The appellant / Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P. No.771 of 2012, if the award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

K. RAJASEKAR, J.

dpq

To

1. The Motor Accident Claims Tribunal,
   Puducherry.

2.The Section Officer,
   V.R.Section,
   High Court, Chennai.

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