BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA(MD)Nos.10 and 271 of 2021
and
CMP(MD)No.2261 of 2021

(1)CMA(MD)No.10 of 2021:-

Alagurani : Appellant/Petitioner

Vs.

1.A.Kannan

2.The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office,
K.J.R Complex, No.16,
North Veli Street,
Madurai-9. : Respondents/Respondents
(The 1st respondent remained set *ex-parte* before the trial court. Hence, Notice is dispensed with)

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the compensation amount made in MCOP No.721 of 2016 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Madurai, dated 26/08/2020.

For Appellant : Mr.K.Kumaravel

For 1st Respondent : No appearance

For 2nd Respondent : Mr.C.Jawahar Ravindran

(2)CMA(MD)No.271 of 2021:-

M/s.Oriental Insurance Co. Ltd.,
Divisional Office,
KJR Complex,
No.16 North Veli Street,
Madurai-9.
Rep. through its Divisional Manager : Appellant/R2

Vs.

1.Alagurani : 1st Respondent/ Petitioner

2.A.Kannan : 2nd Respondent/ Respondent No.1

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Motor Accident Claims Tribunal-cum-Special Sub Court, Madurai, made in MCOP No.721 of 2016, dated 26/08/2020.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.K.Kumaravel

For 2nd Respondent : No appearance

JUDGMENT

CMA(MD)No.10 of 2021 is filed seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal-cum-Special Sub Court, Madurai, made in MCOP No.721 of 2016, dated 26/08/2020, whereas CMA(MD)No.271 of 2021 has been filed seeking to set aside the award passed by the Tribunal.

2.**The facts in brief**:-

MCOP No.721 of 2016 was filed by the claimant namely Alagurani, who is the appellant in CMA(MD)No.10 of 2021 stating that on 21/05/2014 at about 06.00 am, she was travelling as load-woman in the Tractor/Trailer (TN-59-AB-8968/TN-59-JA-8027) on the Mullaiyure Main Road. At that time, the driver of the vehicle drove the same in a rash and negligent manner. Because of that rash and negligent driving, she fell down from the Tractor and sustained grievous injuries. A case in Crime No.143 of 2015 was registered on the file of the Alanganallur Police Station for the offences under sections 279 and 337 IPC. She was admitted in the Rajaji Government Hospital Madurai as inpatient and was in continuous treatment till the date of filing of the claim petition. She incurred Rs.1,00,000/- towards medical expenses. Because of the accidental injuries, she could not continue the work as before. Claiming compensation of Rs.15,00,000/-, the petition was filed.

3.That was resisted by the Insurance Company stating that after the alleged occurrence, the complaint was filed after 1-1/2 years; Only the Tractor was insured with the Insurance Company, but no Trailer. More-over, the Tractor can be used only for agricultural purpose.

But at the time of the occurrence, it was used for transporting hallow bricks. It is nothing, but violation of the Motor Vehicles Act conditions. More-over in the Tractor, only the driver can sit and other person was not permitted. Apart from that, other customary denials were made.

4.The owner of the vehicle, who is the first respondent before the Tribunal remained *ex-parte*. On the side of the claimant, 2 witnesses were examined and 13 documents marked. On the side of the Insurance company, 2 witnesses were examined and 4 documents marked.

5.At the conclusion of the enquiry, the Tribunal came to the conclusion that the occurrence took place because of the rash and negligent driving on the part of the driver of the vehicle. So, it fastened the liability upon the Insurance Company, since it was proved that the petitioner was travelling in the vehicle along with goods.

6.Regarding the compensation, it assessed the disability at 57% on the basis of the report submitted by the Doctor. By adopting proper multiplier, it arrived at the compensation amount of Rs.6,72,000/- for the partial permanent disability. To that, customary amounts and medical expenses were added. Totally, it fixed the compensation at Rs.7,44,000/-.

7.Aggrieved over the same, both the claimant as well as the Insurance Company filed separate appeals.

8.The claimant says that she suffered 100% disability and fixing the monthly income at Rs.5,000/- is meagre. So seeking enhancement CMA(MD)No.10 of 2021 is filed.

9.So far as the Insurance Company is concerned, it filed CMA(MD)No.271 of 2021 on the ground that they are not liable to pay the compensation.

10.Heard both sides in both the matters. Records have been called for from the trial court and perused.

11.The points to be considered are (1)Whether the claimant was travelling in the vehicle along with goods as a load-woman; and (2)Whether the load-woman is permitted to travel in the tractor or trailer as the case may be as a load-woman.

12.Regarding the nature of the vehicle, it is admitted by the claimant herself that it is a Tractor attached with Trailer. The Insurance Company says that only the Tractor was insured and not the Trailer where she was actually travelling, can be taken for consideration at the first instance. She has stated that she was travelling in the vehicle as load-woman with hallow bricks. Hallow bricks were taken to the owners agricultural land for making some construction works.

13.During the course of cross examination, she has stated that in the Tractor, she was sitting in the mudguard. Seating capacity of the Tractor is only one namely the Driver. No other person is permitted to travel in the Tractor. But it appears that the claimant was travelling in the mudguard portion of the Tractor, which is not permissible and it is a clear violation. The Tribunal recorded a finding that the claimant travelling along with goods as load-woman.

14.Now we will see the policy. The copy of the Form 24 of the vehicle is marked as Ex.R1 on the side of the Insurance Company. Wherein we find that the seating capacity of the Tractor is noted as 'one'. So, the claimant is not permitted to travel in the Tractor.

15.The copy of the policy is marked as Ex.R4. Wherein we find that the seating capacity is noted as 'one'. Liability was incurred by the Insurance Company on payment of premium for driver, conductor, cleaner and third party. Without noticing that the conductor or cleaner are not available for the Tractor, the Insurance premium has been collected.

16.Now whatever it may be, the question which arises for consideration is whether a load-woman will come under the category of Cleaner.

17.As admitted by the claimant herself, she was travelling in the Tractor as a load-woman. She will not fit into the category of Cleaner. So, against the Motor Vehicle Rules and Registration Certificate, it appears that the claimant was travelling. Since, it is violation of the Motor Vehicles Act, the Insurance Company can disown their liability.

18.The next question, which arises for consideration is whether pay and recovery ought to have been ordered by the Tribunal. That was the argument advanced by the claimant.

19.For that purpose, the learned counsel appearing for the claimant relied upon the following judgement:-

> *(1)V.Renganathan and another Vs. Branch Manager, United India Insurance Co. Ltd. And another (2023 ACJ 623);*
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> *(2)Sivaraj Vs. Rajendra and another [(2018)10 SCC 432];*
>
> *(3)Unreported judgment of this court made in CMA(MD)No.1292 of 2016, dated 27/06/2023 (Arumugam Vs. K.Arumugam and another);*
>
> *4.Golla Rajanna Vs. The Divisional Manager and another (2017(1) TN MAC 1 (SC); and*
>
> *(5)Bhuvaneswari Vs. Mani (2020(2) TN MAC 389).*

20.Per contra, the learned counsel appearing for the Insurance Company would rely upon various judgments, which were rendered subsequent to the judgments viz., (1)HDFC Vs. Kannamma (2020(2) TN MAC 263 (MHC); (2)NIA Vs. Murugammal (2020(2) TN MAC 503 (MHC) and NIA Vs. Chinnapillai (2021(1) TN MAC 360(MHC).

21.No doubt that a mudguard traveller is not entitled to be protected and the Insurance Company is not liable to pay the compensation, since he has to be considered only as a gratuitous passenger. So, the Insurance Company cannot be held liable to pay the amount and only the insured is liable. He is permitted the gratuitous passenger to travel in the mudguard alone liable to pay the compensation. There can be no quarrel on that proposition of law. But here, as mentioned above, whether pay and recovery can be ordered is the only point.

22.As mentioned above, policy premium was collected for various persons and this was clarified with the counsel appearing for the 2nd respondent as to how the premium was collected for those persons. No proper answer was able to be given by the learned counsel appearing for the Insurance Company.

23.When premium has been collected for those persons, then the Insurance Company is liable to pay the compensation on behalf of the insured and due to violation of the Motor Vehicle Act, the Insurance Company can recover the same from the insured. On that account, **CMA(MD)No.271 of 2021 is allowed.** The award is modified to the effect that the Appellant Insurance Company is directed to pay the entire compensation amount and recover the same from the second respondent herein.

24.The second point is with regard to quantum.

25.The learned counsel appearing for the claimant would submit that the claimant suffered 57% of partial permanent disability. He would further submit that it must be enhanced. But here, multiplier method was adopted by the Tribunal taking into account the fact that the claimant was a daily wager. She suffered multiple fracture and treated as outpatient from 21/05/2014 to 02/08/2014 in the Rajaji Government Hospital, Madurai. She was referred to the Medical Board for assessing the disability. The Medical Board assessed the disability at 57% as noted above. The Disability Certificate was also marked as Ex.C1. Considering the multiple fracture suffered by the claimant and the percent of disability, the Tribunal thought it fit to adopt the multiplier method, which is not seriously disputed by the 2nd respondent herein. Even though, it is stated by the 2nd respondent that no proper evidence was let in by the claimant to prove, but the documents produced on the side of the claimant shows that she suffered 57% of partial permanent disability. So, the contention of the 2nd respondent is rejected. So also the enhancement request made by the claimant.

26.The Tribunal has categorized the following heads:-

Disability (84,000/- x 16 x 50/100)	Rs.6,72,000/-
Pain and Sufferings	Rs. 20,000/-
Nutrition Food	Rs. 10,000/-
Attender Charges	Rs. 15,000/-
Clothes	Rs. 2,000/-
Transport charges to hospital	Rs. 5,000/-
Medical expenses	Rs. 20,000/-
Total	**Rs.7,44,000**

27.The compensation noted above has been reasonably fixed. Accordingly, CMA(MD)No.10 of 2021 filed by the claimant for enhancement is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

04/06/2024

Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Special Court,
Madurai.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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CMA(MD)Nos.10 and 271 of 2021

04/06/2024