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Civil Miscellaneous Appeal No.1414 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1414 of 2023

K.Radhakrishnan
S/o.Karuppasamy

... Appellant

Vs.

1.K.Selladurai

2.United India Insurance Co. Ltd.,
Motor Third Party Hub,
Silingi Building,
4th Floor, No.134, Greams Road,
Chennai - 600 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.01.2023 made in M.C.O.P.No.5339 of 2019 on the file of Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.J.Michael Visuvasam [R2]



JUDGMENT

The appellant/claimant, aggrieved by the award passed by the Tribunal in exonerating the second respondent insurance company from paying the compensation, has filed this appeal against the award passed by the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, in M.C.O.P.No.5339 of 2019, dated 06.01.2023.

2. The case of the claimant is that on 22.08.2019, he was riding his two wheeler at R.K.Shanmugam Salai and at about 23.50 hours near K.K.Nagar, the offending vehicle, a lorry, was driven in a rash and negligent manner and it dashed on the two wheeler and as a result, the claimant sustained grievous injuries resulting in locomotor disability. The claimant underwent treatment as an inpatient for nearly 80 days in different spells and he also underwent three surgeries. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4. The Tribunal thereafter considered the liability of the second



respondent insurance company to pay the compensation on behalf of the insured. The Tribunal considered the evidence of RW-1, who had stated that the cheque that was given towards premium was dishonoured and therefore, the policy itself was cancelled with effect from 14.02.2019. In view of the same, on the date of accident i.e. 22.08.2019, there was no valid insurance policy in subsistence for the vehicle. Hence, the second respondent insurance company denied their liability in this case. This stand taken by the second respondent insurance company was accepted by the Tribunal and the Tribunal gave a finding that it is only the first respondent, who is liable to pay the compensation and thereby, the second respondent insurance company was exonerated from the liability.

5. The Tribunal thereafter proceeded to fix the total compensation at Rs.39,80,847/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	34,50,081/-
2.	Medical expenses	2,31,779/-
3.	Pain and sufferings	80,000/-
4.	Loss of amenities	80,000/-
5.	Loss of earning during treatment	78,987/-
6.	Attender charges	20,000/-
7.	Transportation charges	20,000/-



<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
8.	Extra nourishment	20,000/-
	Total	39,80,847/-
	Rounded off to	39,80,900/-

The above compensation was directed to be paid along with interest at 7.5% p.a.

6. The claimant, questioning the award of the Tribunal exonerating the second respondent insurance company from incurring the liability, has filed the present appeal before this Court.

7. Heard Mr.R.Nalliyappan, learned counsel for appellant/claimant and Mr.J.Michael Visuvasam, learned counsel for second respondent insurance company.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The notice that was sent to first respondent has been returned



with an endorsement 'no such person'. The first respondent did not contest the case before the Tribunal and he was set *ex parte*.

11. It was contended by learned counsel for second respondent insurance company that the first respondent must be heard before final judgment is passed in this appeal. This Court is not able to agree with this submission made by learned counsel for second respondent insurance company. The reason being that the first respondent, in any case, will be liable to pay compensation in this case. If this appeal is dismissed, the first respondent will be directly liable to pay compensation to the claimant. On the other hand, if this appeal is allowed and 'pay and recover' principle is adopted, whatever compensation is paid by the second respondent insurance company can be recovered from the first respondent. In either way, the first respondent cannot escape liability. Therefore, since the first respondent did not even contest the case before the Tribunal, he need not be heard in this appeal because no fresh or new liability is going to be put against the first respondent.

12. The main issue that has to be gone into in this case is with



regard to the second respondent insurance company being exonerated from the liability. The evidence of RW-1 assumes a lot of significance in this case. The insurance policy was marked as Ex.R3. This policy was for the period from 11.02.2019 to 10.02.2020. The accident had taken place on 22.08.2019. The premium was paid by the first respondent by way of a cheque and this cheque was dishonoured. Therefore, the second respondent insurance company has proceeded to cancel the policy on 14.02.2019. The question is as to whether this was informed to the first respondent and also to the Regional Transport Office. RW-1, in his cross-examination, had stated as follows:

"TN 21 AL 8156 என்ற லாரிக்கு நீங்கள் Insurance கொடுத்துள்ளீர்களா என்றால் Check dishonour ஆகி விட்டதால் கொடுத்த Insurance policy ஐ cancel செய்துவிட்டோம். அவ்வாறு கொடுக்கப்பட்ட policy எந்த தேதியிலிருந்து எந்த தேதி வரை கொடுக்கப்பட்டது என்றால் 11/2/19 முதல் 10/2/2020 வரை ஆகும், ஆனால் policy 11/2/2019 முதல் 13/2/2019 வரை நிலுவையிலிருந்தது. 14/2/2019 அன்று ரத்து செய்யப்பட்டு விட்டது."

"Policy ரத்து செய்யப்பட்டது சம்பந்தமான அறிவிப்பை சம்பந்தப்பட்ட வாகனத்தின் உரிமையாளர் மற்றும் வட்டாரப் போக்குவரத்து அலுவலருக்கும் அனுப்பினீர்களா என்றால் அனுப்பினோம் அந்த அறிவிப்பு அனுப்பப்பட்டதற்கான ஒப்புதல் அட்டை தாக்கல் செய்துள்ளீர்களா என்றால் இல்லை, அறிவிப்பு Ex.R.4 ஆக தாக்கல் செய்யப்பட்டுள்ளது. Ex.R4 அனுப்பப்பட்டதற்கான ரசீதும் இல்லை என்று சொன்னால் ரசீது தாக்கல் செய்யவில்லை. பதிவுத் தபால் சம்பந்தப்பட்ட நபருக்கு சார்பு செய்யப்பட்டது என்பதற்கான ஆதாரமோ மீண்டும் திருப்பி அனுப்பப்பட்டதற்கான ஆதாரமோ நீதிமன்றத்தில் தாக்கல்



செய்யப்படவில்லை என்று சொன்னால் சரிதான் சாட்சி Ex.R4 ஆவணம் சார்பு செய்யப்பட்டுவிட்டது என்று பதிலளித்தார் மனுதாரர் தரப்பில் சார்பு செய்யப்பட்டது என்பதனை நிரூபிப்பதற்கு ஆதாரம் எதுவும் தாக்கல் செய்யப்படாமல் சார்பு செய்யப்பட்டது என்று கூறும் கூற்று ஏற்றுக்கொள்ளத்தக்கதல்ல என்று ஆட்சேபணை தெரிவித்தார். Ex.R4 ஆவணம் இந்த வழக்கிற்காக தயாரிக்கப்பட்டது என்று சொன்னால் இல்லை. மேற்கண்ட Ex.R4 ஆவணம் தான் இவ்வழக்கிற்கு பிரதான ஆவணமாகும். Ex.R4 ஆவணத்தில் எந்த வட்டார அலுவலருக்கு அனுப்பப்பட்டது என்பதற்கான குறிப்புகள் ஏதுமில்லை என்று சொன்னால் சரிதான். எந்த வட்டார அலுவலருக்கும் அனுப்பாமல் பொய் சாட்சி சொல்கிறேன் என்று சொன்னால் சரியல்ல. அவ்வாறு அனுப்பியிருந்தால் அதற்கான ஆதாரத்தை நீதிமன்றத்தில் தாக்கல் செய்திருப்பேன் என்று சொன்னால் சரியல்ல."

13. It is quite evident from the above deposition of RW-1 that there was not even a scrap of paper available before the Tribunal to prove that the cancellation of the policy was in fact informed to the first respondent and the concerned Regional Transport Office. What was presented before the Tribunal was merely the letter of cancellation marked as Ex.R4. The oral assertion made by RW-1 is not supported by any document and therefore, it must be construed that there was no evidence available to show that the cancellation of the policy was informed to the first respondent and to the concerned Regional Transport Office.

14. Insofar as the third party is concerned, in cases of this nature



where the policy was given by the second respondent insurance company and it was subsequently cancelled and there is no proof to show that the cancellation of the policy was informed to the insured and to the Regional Transport Office, the Court has to adopt 'pay and recover' method. The law on this issue is now too well settled.

15. In the light of the above discussion, this Court holds that the second respondent insurance company is liable to pay compensation to the claimant and thereafter, the compensation can be recovered from the first respondent. The contrary finding rendered by the Tribunal is hereby set aside.

16. The next issue is with regard to the compensation that has been fixed by the Tribunal under various heads. It is an admitted case that the claimant was working as a driver in the Metropolitan Transport Corporation. His monthly income was fixed by the Tribunal at Rs.26,329/- based on the salary certificate. The claimant was a permanent employee of the Metropolitan Transport Corporation. The question is as to whether per percentage method must be adopted or the multiplier method must be adopted by considering the functional disability suffered



by the claimant. The claimant continues to work in the Metropolitan Transport Corporation. Even though the claimant suffers from locomotor disability, that does not in any way disentitle the claimant from continuing with the job in view of the provisions of the Rights of Persons with Disabilities Act, 2016. This Act makes it clear that disability cannot be a ground to disengage the services of a permanent employee, either he should be given an alternative employment or a supernumerary post must be created and the salary that is earned also cannot be reduced. Therefore, even though the claimant has suffered a serious disability, that does not in any way take away the employment of the claimant and he continues to serve in the transport corporation. Therefore, the Tribunal was not right in adopting the multiplier method.

17. In the light of the above discussion, the compensation under the head 'disability' is fixed at Rs.4,20,000/- [7000 x 60].

18. The claimant in this case had undergone treatment as an inpatient for nearly 80 days from the year 2019 to 2021 in various spells. He had also undergone three operations. Therefore, this Court is inclined to enhance the compensation under the heads 'pain and sufferings', 'loss



of amenities', 'attender charges', 'transportation charges' and 'extra nourishment' to Rs.2,00,000/-, Rs.1,00,000/-, Rs.80,000/-, Rs.50,000/- and Rs.1,00,000/- respectively.

19. The compensation awarded under the other heads is reasonable and the same does not require the interference of this Court.

20. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Disability	34,50,081/-	4,20,000/-
2.	Medical expenses	2,31,779/-	2,31,779/-
3.	Pain and sufferings	80,000/-	2,00,000/-
4.	Loss of amenities	80,000/-	1,00,000/-
5.	Loss of earning during treatment	78,987/-	78,987/-
6.	Attender charges	20,000/-	80,000/-
7.	Transportation charges	20,000/-	50,000/-
8.	Extra nourishment	20,000/-	1,00,000/-
	Total	39,80,847/-	12,60,776/-
	Rounded off to	39,80,900/-	12,60,800/-

21. The compensation awarded by the Tribunal at Rs.39,80,900/- is



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reduced to Rs.12,60,800/-. The second respondent insurance company is directed to deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. Thereafter, the second respondent insurance company will be entitled to recover the same from the first respondent. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

03.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
II Judge, Court of Small Causes,
Chennai.

N.ANAND VENKATESH, J.



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