IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2173 of 2010
and
M.P.No.1 of 2010

M/s.ICICI Lombard General Insurance Co.Ltd.,
ICICI Bank Towers,
Bandra-Kurla Complex,
Mumbai-400 051. .. Appellant/3rd Respondent

Vs.

1. Radhakrishnan ..1st respondent/Petitioner

2. Selvaraj

3. Tamilselvan .. Respondents 2 & 3/Respondents 1 & 2
(Respondents 2 & 3 exparte in lower court)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.71 of 2008, dated 08.12.2009, on the file of the Motor Accidents Claims Tribunal, Principal Subordinate Court, Tiruppur.

For Appellant : Mrs.R.Sreevidhya
For 1st Respondent : Mr.Ma.P.Thangavel
For Respondents 2 & 3 : Exparte



JUDGMENT

In a road accident that took place on 11.02.2007, at 11.30 a.m., the claimant was then riding a bike, suffered injuries to his person, when a van belonging to the 2nd respondent and insured with the appellant dashed against him. For the injuries suffered, the claimant made a claim for Rs.6,00,000/-, whereas the Tribunal has passed an award for Rs.3,18,760/- payable with interest at 7.5% per annum. Challenging the award passed by the Tribunal on the ground of (a) Quantum and (b) Liability, the appellant has approached this Court.

2. Elaborating the arguments, the learned counsel for the appellant submitted that at the relevant time, the driver of the vehicle did not have a valid and effective licence and it is a clear case of violation of policy condition. So far as the quantum of compensation is concerned, the learned counsel submitted that the Tribunal was in error, when it adopted multiplier method to quantify the compensation payable.

3. As in most cases, the owner of the vehicle remained exparte. When the specific allegation is that the driver who drove the vehicle at the relevant time did not possess a valid and effective driving licence, it appears that the owners of the vehicle are under false sense of protection that when they insured their vehicle, the same will also be an insurance against their failure to perform their duty of the court. Whether a driver of the vehicle had a valid driving licence at the relevant time or not, is a matter within the exclusive knowledge of the owner of the vehicle. At least, he had the best opportunity to know it and ought to have known it. It is therefore his duty to inform the Court in all such circumstances, about the fact that is well within his knowledge. Unfortunately, in this Country a tendency has crept in and put on display as if the entire burden is on the insurance companies and they have to hunt for evidence to defend the claim against them. An owner of the vehicle is therefore under a legal obligation to assist the Court with the information that are within his exclusive knowledge to enable a decision on an issue touching on the nature or extent of liability that the insurance companies might have to face. To stay away from the Court might be a strategy that suits him, but still cannot be considered as relieving him of his duty to the Court. There is always a counter argument to it, in that the insurance companies would conduct an investigation through their surveyors and that they have accepted the burden on themselves. It must be stressed that the investigation conducted by insurance companies as to the cause of accident and other related matters is internal to it and the report of its investigation, but the best evidence is still with the owner of the vehicle. For want of any denial to appellant's contention that the driver of the vehicle did not hold a valid licence, this Court upholds the driver of the offending vehcile did not possess a valid and effective driving licence to drive the vehicle and necessarily the doctrine of pay and recover would operate in favour of the appellant.

4. Turning to quantum of compensation awarded the Tribunal has passed the award as below:

| Sl.No. | Heads | Amount awarded (Rs.) |
|---|---|---|
| 1 | Loss of future earning capacity | 2,93,760/- |
| 2 | Pain and Sufferrings | 15,000/- |
| 3 | Extra Nourishments | 2,000/- |
| 4 | Transportation | 1,000/- |
| 5 | Loss of amenities | 7,000/- |
| | Total | 3,18,760/- |

5. For quantifying the loss of future earning capacity of the victim, the Tribunal has adopted the multiplier method to which the appellant takes an exception. On going through the evidence it is seen that the injuries that the claimant has suffered in the accident included three fractures and his left hand has been crushed. The victim was 19 years old at the relevant time of accident and was working as a tailor. It is also brought to the notice of this Court that he has suffered shortening of his left leg by 1 cm. The nature of injuries indicate that they might affect the future earning capacity of the victim/claimant as he is a tailor by occupation and necessarily it is a case of functional disability. If so viewed, this Court does not find any irregularity in the apportionment adopting multiplier method for quantifying compensation payable on the head of loss of earning power.

6. To conclude, this Court confirms the quantum of compensation passed by the Tribunal. It also finds that the doctrine of pay and recovery should be applied. The learned counsel for the appellant informed that the appellant had already deposited the entire amount before the Tribunal and a part of the amount has been withdrawn by the claimant. The claimant would now be entitled to withdraw the balance amount with all accrued interests forthwith.

7. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal,
Principal Subordinate Court,
Tiruppur.

+1 CC to Ms.R. Sreevidya, advocate sr 65795.
+1 CC to Mr.Ma.P. Thangavel, Advocate sr 66215.

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and
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CA(CO)
GSP(05/07/2018)