IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01.12.2016

Judgment Pronounced on :24.02.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2583 of 2008

Chenniappan ... Appellant

Vs.

1.R.Subramani
2.Tamil Nadu Transport Corporation (Coimbatore-2) Ltd.,
Rep. by its Managing Director,
Chennimalai Road,
Erode - 638 455.

3.N.Kulandaisamy
4.M.Palanisamy

5.The National Insurance Co. Limited,
403, Mettur Road,
Bhavani - 638 301. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and final order passed in MCOP.No.813 of 2003 dated 23.09.2004 on the file of the Motor Accidents Claims Tribunal (I Additional Sub Judge), Erode.

For Appellant :Mr.K.S.Jayaganeshan
For Respondents:Ms.A.Manjumatha [for R1 & R2]
Mr.S.Arunkumar [for R5]
No Appearance [R3 & R4]

JUDGMENT

The claimant who had suffered injury when on 10-02-2003, a goods-carrier bearing registration No.TN36-E-7754 in which he was travelling as a load man and a bus belonging to the second respondent collided on Gobi-Kunnathur Road in Erode District, has preferred this appeal seeking enhancement of compensation.

2. The nature of injuries suffered by the appellant were such that his right hand was amputated. Seeking compensation on various heads, the claimant approached the MACT with a claim of Rs.4,00,000/- as against which the Tribunal passed an award for Rs.1,70,250/- payable with interest @ 9% per annum. The Tribunal

in its award has held that the negligence of the driver of the goods carrier has resulted in the accident. As to the liability, the fifth respondent which is the insurance company of the goods carrier has taken up a plea before the Tribunal that there is no policy cover for the claimant and that the claimant was travelling in the goods vehicle as a gratuitous passenger. The Tribunal has accepted the plea of the Insurance Company and fastened liability only on third and fourth respondents who respectively are the driver and owner of the goods carrier in question.

3.Before this Court, the learned counsel for the appellant argued on the need to enhance compensation as well as the need to fasten liability on the insurance company of the goods carrier in which he travelled.

4. Before dealing with the specifics of the argument of the learned counsel for the appellant, a summary of the amount claimed under various heads and the amount awarded for each of them is tabulated below :

Heads	Amount Claimed (Rs.)	Amount Awarded (Rs.)
Loss of earning from 10.02.2003 to 09.02.2004 @ Rs.3,000/- p.m.,	36,000	2,500
Transportation to hospital	2,500	750
Extra nourishment	15,000	2,000
Damage to clothing & articles	500	-
Doctor's fee, hospital charges, medical expenses & attender charges etc.,	75,000	25,000
Compensation for pain and suffering	1,00,000	5,000
Compensation for permanent disability	2,50,000	75,000
Compensation for loss of earning power	1,50,000	60,000
Total :	6,29,000 (claim restricted to Rs.4,00,000/-)	1,70,250

In determining the compensation payable on heads of pecuniary damages, the Tribunal notionally fixed the monthly income of the appellant at Rs.1,500/- whereas he claimed Rs.3,000/- per month. At the said rate it granted Rs.2,500/- as loss of earning.

5.1 As to liability, the learned counsel argued that Ext.R-1 is the insurance policy, which shows that premium has been received for two employees, that at the relevant time when the accident took place the appellant was travelling as a coolie accompanying the goods which included goats and their fodder. The additional premium will cover the liability of the claimant and he should be treated as a representative of the owner of the goods.

5.2. As to the quantum awarded by the Tribunal, the learned counsel argued that the loss of limb which the claimant had suffered due to amputation of his right hand, P.W.2, the doctor has assessed permanent disability at 80% regarding which he has issued EX.P11 certificate. He being a coolie, the claimant has literally lost his ability to earn his livelihood. The Tribunal, in fitness of things should have treated the disability that visited the appellant as functional disability and should have opted for multiplier method and granted compensation for loss of earning power. In the process it also ought to have taken into consideration the future prospects of increase in income and hence the quality of living that the appellant has lost for no fault of his. Here, compensating the permanent disability of the appellant with a paltry Rs.75,000/- is arbitrary and unconscionable. It fixing Rs.60,000/- as compensation for loss of earning power is irrational. On the heads of general or conventional damages too, the compensation fixed was unrealistic. The claimant was treated as an inpatient for 16 days, as could be gathered from Ex.P10-discharge summary and considering the fact that he has lost a limb in amputation Rs.5,000/- that it had awarded for pain and suffering is unconscionably low. On the heads for providing additional nourishment, it has provided only Rs.2,000/-; for loss of amenities and other support it has provided nothing, contended the counsel. He relied on the authority in Divisional Manger, Cholamandalam MS General Insurance Co., Ltd., Vs Mariyammal & Others [2015 CDJ MHC 1526].

6. The learned counsel for the fifth respondent/insurance company contended that Ex.R1-Policy covered liability only for the two employees of the owner of the vehicle and nowhere the claimant has pleaded that he was an employee of fourth respondent at that relevant time. His subsequent version while tendering evidence that he was working as a coolie under the fourth respondent is an improvement over his pleading and the same has been invented only with a view to fasten liability on the insurance company and no more. Besides the vehicle involved in the accident is a mini door auto, where the seating capacity is only one whereas the claimant in his deposition that he has tendered as P.W.1, had stated that along with him five people travelled in the auto. This is far in excess of the permitted seating capacity of the vehicle. The fourth respondent too has remained ex parte and in fitness of things the Tribunal at least should have examined him as a court evidence. The Tribunal has justly and correctly held that the appellant was only a gratuitous passenger travelling in a

goods vehicle and has justly and appropriately refused to impose liability on the Insurance Company and hence the same deserves to be confirmed.

On insurer's liability:

7. Ext.R-1 policy discloses that the goods carrier in question was insured to include two employees. If the vehicle had seating capacity for only one to travel (only the driver perhaps), as was argued by its counsel, why it received premium for two employees? Was the complainant an employee under the 4th respondent? Here there is some variance in evidence. If he is treated as an employee of the owner of the vehicle then there is additional coverage for him. If he were to be treated as one who accompanied the goods on behalf of the owner of the goods, he must be considered as his representative, in which case there is a statutory cover under Sec.147(1) of M.V.Act. In the final analysis how does it matter whether he was an employee of the owner of the vehicle, or coolie of owner of goods? The insurance company can extricate itself from liability only if it could prove that the appellant had travelled as a passenger in a goods carrier and not one who accompanied goods loaded in the carrier. This it failed to achieve. Needless to state, that the 5th respondent insurer is as much liable as the owner of the vehicle. This point is decided in favour of the appellant.

On quantum:

8. Here again the appellant was able to convince this Court as to the need to enhance the compensation. Here is one who has lost his right hand, probably his working hand, and he is a coolie by occupation. What can he do to earn his livelihood? His is a case of functional disability, and after providing for a possibility of he engaging in some job, however remote that possibility might be, his disability is determined at 90%. He is aged 45 years at the relevant time and the appropriate multiplier is 14. The tribunal has determined his monthly income notionally at Rs.1,500/- which by year 2001 standards appear reasonable. On these parameters the value of loss of future earning capacity is determined at (Rs.1500 x 12 x 14 x 90%) Rs. 2,26,800. In a situation such as where a victim has lost his hand, it would be nigh difficult for him to resume earning within two or three months and hence the appellant is granted Rs.15,000/- (for ten months) for loss of earning. For pain and suffering I find the compensation awarded is unconscionably low and the same is enhanced to Rs.1,00,000/-. On other heads, the compensation awarded is retained. The table below provides in nut shell the compensation payable to the appellant:

Heads	Amount Claimed (Rs.)
Loss of future earning capacity	2,26,800/-
Loss of income for 10 months	15,000/-

Heads	Amount Claimed (Rs.)
Pain and suffering	1,00,000/-
Transportation to hospital	750/-
Extra nourishment	2,000/-
Medical expenses	25,000/-
Loss of permanent disability	75,000/-
Total :	4,44,550/-

9. To conclude, this appeal is allowed and the compensation is enhanced from Rs.1,70,250/- to Rs.4,44,550/-, which the respondents 4 and 5 are directed to pay, less any amount already deposited with interest at 9% within four weeks from the date of receipt of this order, whereupon the appellant is permitted to withdraw the same forthwith. No costs. The appellant is directed to pay necessary court fee on the enhanced portion of the award.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Accident Claims Tribunal,
I Additional Subordinate Judge,
Erode.

2.The Section Officer,
VR Section,
High Court, Chennai.

+ 1 cc to Mr.Jayaganeshan, Advocate Sr.12747
+ 1 cc to Mr.S. Arunkumar, Advocate Sr.12522
+ 1 cc to Mr.Anand, Advocate Sr.12774

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MG(CO)
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