BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2017
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.1006 of 2017

Mari ... Appellant/Petitioner

Vs.

1.Pandi
2.Boominathan
3.The National Insurance Co. Ltd.,
rep. By its Divisional Manager,
Divisional Office - I,
No.3, North Veli Street,
Madurai City,
Madurai District. ... Respondents/Respondents
(No relief sought against R2. Hence notice to R2 is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 26.03.2010 made in M.C.O.P.No.157 of 2006 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Paramakudi.

For Appellants : Mr.G.Prabhu Rajadurai
For Respondents : Mr.A.S.Mathialagan for R3
R2 dispensed with

JUDGMENT

Heard the learned counsel on either side.

2.The injured claimant has filed this appeal seeking enhancement of the compensation awarded to him by the Tribunal. He wants the insurance company to satisfy the award in the first instance and thereafter, recover the paid amount from the vehicle owner. The claimant was working as a Supervisor in a bricks chamber. He was a pedestrian walking on the road. A Tata Sumo insured with the third respondent herein dashed against him on 25.09.2006 at about 9.30 a.m. In the resulting accident, the claimant suffered spinal fracture. Disability was assessed at 90% by the doctor. Ex.P15 was marked in support of the said claim. Since the injury is to the claimant's spine, he has suffered paralysis below hip. This is a case of functional disability suffered by the claimant. Therefore for computing compensation, multiplier method must be adopted. The Tribunal awarded a sum of Rs.2,36,300/- as compensation. Since the offending vehicle was driving by the person, who did not have valid licence, entire liability was fastened on the vehicle owner and the insurer was exonerated. Aggrieved by the same, this appeal has been filed.

3.Even though the Tribunal fixed the liability only at 45%, I am of the view that the claimant has suffered a complete loss of earning capacity. This was because he has suffered paralysis below the hip. He was earlier working as Supervisor. He was no longer pursue his work. Therefore, this Court must proceed on the premise that there is complete loss of earning capacity. When the driver of the offending vehicle was not possessed valid driving license, the Tribunal must have directed the insurance company to satisfy the award in the first instance and thereafter, recover the paid amount. The question of exonerating the insurance company does not arise.

4.The claimant was aged 28 years at the time of accident. The accident took place in the year 2006. Therefore, the monthly income should be taken as Rs.4,500/-. Future prospects should be taken as 40%. Therefore, the monthly income is fixed at Rs.6,000/-. Applying relevant multiplier and following the usual formulae, the pecuniary loss is quantified at Rs.6,12,700/-. Damages under other heads can also be awarded. Accordingly, the compensation payable to the claimant is fixed at Rs.7,15,000/-. The third respondent shall satisfy the award in the first instance and thereafter, recover the paid amount from the vehicle owner.

5.The award dated 26.03.2010 made in M.C.O.P.No.157 of 2006 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Paramakudi is modified accordingly.

6.The third respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization, and costs, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by them, if any. The third respondent insurance company is at liberty to recover the paid amount from the vehicle owner, who is the first respondent herein in this very same proceedings.

7.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Paramakudi

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 90854
+1cc to M/S.A.S.Mathialagan, Advocate SR.No. 91050

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