



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.836 of 2013

R.Kuzhandhaisamy

... Appellant / Claimant

Vs.

1. V.K.Enterprises,
Pattamangalam Street,
Mayiladuthurai,
Nagapattinam District.

2. The Zonal Manager,
United India Insurance Company Ltd.,
South Street, Thanjavur. ... Respondents / Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the Judgment and decree dated 23.11.2009 made in MCOP.No.644 of 2007 by the Motor Accident Claims Tribunal (Additional District Judge/FTC), Thanjavur.

For Appellant : Mr.G.Karnan
For Respondent : Mr.M.Vedasingh

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant as against the award, dated 23.11.2009 passed in MCOP.No.644 of 2007 by the Motor Accident Claims Tribunal (Additional District Judge/FTC), Thanjavur.

2. The case of the claimant in the petition is briefly as follows:

On 21.05.2006 at about 12.30 a.m. the injured Kulandhaisamy was travelling as a Loadman in a lorry bearing registration No.TN 50 B 6491, at that time, an another lorry bearing registration No.TN 51 V 1699, which was coming from the opposite side in a rash and negligent manner and insured with the first respondent, dashed against the lorry, thereby the appellant got multiple injuries. hence, he filed a petition before the Tribunal claiming a sum of Rs.2,00,000/-.



3. Before the Tribunal, on the side of the petitioner, P.Ws.1 & 2 were examined and Exs.P1 to P6 were marked. On the side of the respondents, no witness was examined and no document was marked.

4. On a careful consideration of the evidence on record, the learned Tribunal has awarded a sum of Rs.24,500/- as compensation with interest at the rate of 7.5%. Not satisfied with the quantum of award, the appeal has been filed by the appellant/claimant.

5. The learned counsel for the appellant/claimant would submit that in respect of another person, who died in the same accident, an award has been passed in M.C.O.P.No.85 of 2006, by the Tribunal fixing liability on the 2nd respondent. But, as far as the present appellant is concerned, since a copy of the Insurance policy was not marked, the liability was fixed on the first respondent. The Tribunal has not considered the Insurance Policy as well as driving license, which was marked as Exs.B4 and B5 in MCOP.No.85 of 2006 and accepted by the 2nd respondent.

6. The learned counsel for the appellant/claimant would also submit that the victim sustained injuries and he was treated by P.W.2-doctor, who examined him and gave the disability certificate under Ex.P4. On the basis of Ex.P4, the disability is assessed at 22%. The learned counsel rallied on the Judgment rendered in **R.MAHABOOB ALI v. S.GNANESWARAN** reported in **2016(2) TN MAC 519**, wherein it has been held that a sum of Rs.3,000/- should be fixed for 1% of disability, but the Tribunal has awarded only a sum of Rs.18,000/- for partial permanent disability of 22%.

7. Considering the above submission, this court is of the considered view that the compensation awarded for partial permanent disability can be fixed at Rs.3,000/- per 1% percentage. Hence, the award of the trial Court regarding 22% partial permanent disability at Rs.18,000/- is enhanced to Rs.66,000/-.

8. For pain and sufferings, the Tribunal has awarded a sum of Rs.5,000/-, which is not reasonable and hence, the same is enhanced to Rs.10,000/-. The Tribunal has awarded a sum of Rs.500/- each for 'transportation' and 'extra nourishment' and the same is enhanced to Rs.1,500/- each (Total Rs.3,000/-). The Tribunal has awarded a sum of Rs.500/- for medical expenses, which is reasonable and the same is confirmed.

9. Considering the facts and circumstances of the case, though the copy of the Insurance policy was not marked in this case, the insurer is liable to pay the compensation, as the award has been passed in the other matter in M.C.O.P.No.85 of 2006 fixing liability on the insurer / second respondent, the same principle should be applied in this case also. Accordingly, the liability



shall be shifted to the insurer/second respondent instead of the first respondent.

10.The award of the Tribunal is enhanced to Rs.79,500/- from Rs.24,500/- along with interest at the rate of 7.5%. The second respondent / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realization, within a period of six weeks from the date of receipt of a copy of this order, if not already deposited. On such deposit being made, the claimant is entitled to withdraw the award amount with proportionate interest and costs, without filing any formal petition before the Court below.

11.In the result, the Civil Miscellaneous appeal is disposed of. No costs.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To,

1.The Motor Accident Claims Tribunal
(Additional District Judge/FTC), Thanjavur.

+1cc to Mr.G.Karnan, Advocate Sr.No.68605

RJ2

VB/MR/KKR/SAR4/16/08/2017/3P/3C

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