

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM:

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.A.No.3976 of 2005

The New India Assurance Co.Ltd.,
Motor Third Party Claims Cell,
No.144, Moore Street,
Chennai - 600 001 .. Appellant/IIIrd respondent

Vs.

1.S.K.Radhakrishnan ..1st Respondent/Claimant
2.N.Ramajayam ..2nd Respondent/1st
Respondent
3.G.Elumalai ...IIIrd Respondent/IIInd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 18.02.2004 and made in M.C.O.P.No.5048 of 2000 on the file of Motor Accident Claims Tribunal by the learned II Judge of Small Causes Court, Chennai.

For Appellant

: Mr.Padmanabhan

JUDGMENT

The appellant/New India Assurance Co.,Ltd has preferred this appeal against the order and decree passed in M.C.O.P.No.5048 of 2000 on the file of the Motor Accident Claims Tribunal (II Judge of Small Causes Court),Chennai

2.The facts leading to the Claim Application are as follows:-

On 18.10.2000 at about 19.15 hrs. the petitioner was riding the cycle from West to East in Basin Road on the northern side of the road and at that time, he was proceeding opposite to

KCP Polytechnic the Lorry TDE 2608 came from behind in a very high speed, rash and negligent manner, came to the extreme northern side of the road and dashed against the petitioner and due to which, the petitioner sustained multiple fractures and nerve injuries and he was claiming a sum of Rs.11,30,000/- as compensation.

3. The respondent/Insurance Company in the counter statement denied that validity for the insurance policy for the said lorry and also the validity license of the driver of the lorry at the time of accident. It is very much specifically stated by the respondent/Insurance Company that the driving license of the driver of the lorry TDE 2608 had expired on 02.10.2000 itself and on the date of accident on 18.10.2000, there was no effective driving license as required under the terms and conditions of Insurance policy.

4. The Tribunal after analyzing the evidence and documents placed before the same has given a finding that the validity of the driving license is upto 02.10.2000 and the date of accident is 18.10.2000 and hence, the driver of the said lorry has one month time to renew the said license. Hence, he has valid license till 01.11.2000 and hence, the Tribunal based on the same has given a finding that the driver of the said lorry had valid license and fixed the liability on the respondent/Insurance Company, since, the vehicle insured with the appellant/Insurance Company also awarded a sum of Rs.3,01,000/- as compensation under the various heads as follows:-

Head	Amount awarded by the tribunal
The loss of earning for the period from 18.10.2000 to 17.05.2000	Rs .30,000/-
Transport Expenses	Rs. 2,000/-
Nourishment	Rs. 3,000/-
Damage to dress and cycle	Rs. 1,000/-
Pain and suffering to family members	Rs. 5,000/-
Additional transport expenses	Rs. 5,000/-
Mental agony to the petitioner	Rs. 30,000/-
Loss of promotional prospects	Rs.1,00,000/-
Pain and suffering	Rs. 25,000/-
Permanent disability	Rs. 50,000/-

Head	Amount awarded by the tribunal
Loss of earning	Rs. 50,000/-
Total	Rs.3,01,000/-

5. Aggrieved against the same, the appellant has preferred this appeal.

6. In the grounds of appeal, the appellant is very much disputing the validity of driving license of the driver of the said vehicle. Since, at the time of accident, the driver of the said vehicle driving the vehicle without valid license which is contrary to the terms and conditions of the policy, the tribunal ought to have held that the appellant herein is entitled to proceed against the insurer for recovery of the award passed by the Court after satisfying the claim.

7. When there is a violation of policy conditions and considering the date of the accident, this appellant ought to have been exonerated from the liability and the tribunal ought to have made the third respondent, the owner as the person liable to pay the compensation. Hence, the appellant herein sought for an order by this Court in favour of the appellant to claim the amount from the third respondent after paying the same by this appellant.

8. The other grievance made in the appeal is that the sum awarded under various heads are highly excessive to and there are also sums awarded under heads to which the claimant is not entitled. On the whole, the sum awarded Rs.3,01,000/- is highly excessive.

9. Heard and perused the records.

10. On a perusal of the award, it is observed that at the time of accident, the driver of the first respondent vehicle had no valid license for which, a notice was issued and the same is marked as Exhibit R2. For the receipt of the said notice, the Acknowledgment Card is marked as Exhibit R5 and Report is marked as Exhibit R6. Therefore, the argument advanced by the appellant is that there is no reply from the either the driver of the owner regarding the renewal of license since the date expires on 18.10.2000, but it is argued on the side of the claimant that the driver had one month time to renew the license and the renewal period falls on 01.11.2000. Hence, the tribunal has taken the due that till 01.11.2000.

11. Hence, the argument advanced by the appellant is that there is no valid license on the date of accident and only the time limit is given to the driver to renew the license and it cannot be considered that he had valid license till 01.11.2000. The further argument advanced by the appellant/Insurance Company is that the driver of the said vehicle had valid license only till 02.10.2000. Hence, on the date of accident, he had no valid license and the time given for renewal of the license expired on 02.10.2000.

12. In support of the argument advanced by the claimant, the decision in 2004 (1) TNMAC 75 (DB) [In the High Court of Madras Vs. The Motor Vehicles Act, 1988 (Bare Act)] which is as follows:-

"Provided that every driving license shall notwithstanding its expiry under this sub-section, continue to be effective for a period of thirty days from such expiry".

13. Further it is argued that even after 30 days if the driver has not renewed the same only then the question of liability will arise. However, the tribunal has given a finding that at the time of accident though the license expired he had time till 01.11.2000 and it has to be stated that he had valid license at the time of accident. The argument advanced is that, the tribunal, in such a case, when considering the fact that the driver had no valid license, ought to have ordered pay and recovery which is quite proper and reasonable. Hence, the appellant prayed for pay and recovery order since the amount has been awarded against the owner and it is also the liability of the Insurance Company to obey the direction of the Court to pay the claimant and the appellant has to be given the right to recover the same from the owner of the vehicle. Hence, in view of the argument advanced by the appellant, this Court is directing the appellant to recover the same after satisfying the claim from the owner of the vehicle.

14. Regarding the quantum also the appellant has vehemently argued that the sum awarded under various heads are highly excessive and also improper. The respondent has also argued on the point that the sum arrived by the tribunal as monthly income at Rs.5,000/- is highly excessive. The occupation of the claimant in the claim application has been stated as that he is a messenger by profession and employed in the State Bank of India, Chennai. Hence, the monthly income determined by the tribunal in the absence of any documents was argued as very huge amount. As per Exhibit P2, the Salary certificate, the monthly income of the claimant is Rs.4,600/-. Hence, the tribunal has taken the monthly income as Rs.5,000/- which is very much argued

as excessive. When calculating the disability, it is observed that the petitioner sustained injuries with fracture and he was also treated as an in-patient in Sugam Hospital from 18.10.2000 to 03.11.2000.

15. On the side of the claimant P.W.2 was examined who has stated that for the fracture injury in the right forearm, rod was fixed for the said injury and he finds it difficult to move the right hand or hold any objects and hence, the Doctor has assessed the liability at 55% and the tribunal has awarded a sum of Rs.50,000/-. The appellant has argued for the fracture injury, the disability assessed by the Doctor at 55% is highly excessive and the sum awarded under 'disability' at Rs.50,000/- is also highly excessive. The further sum awarded under 'loss of income' as Rs.50,000/- is also very much excessive and for 'loss of expectation' a sum of Rs.1,00,000/- is awarded to the petitioner is also very much argued by the appellant/Insurance Company as not justified. The sum awarded under 'loss of earning power' at Rs.50,000/- is also excessive. The sum awarded under the head 'loss of promotional prospects' at Rs.1,00,000/- is not justified since no evidence or no witness was examined on the side of the claimant and on the whole, it is argued by the appellant that the tribunal has awarded huge amounts on various grounds without any evidence or documentary proof before the tribunal.

16. On perusal of the award, it is seen that the monthly income has been taken at Rs.5,000/- when the Salary Certificate Exhibit P2 shows Rs.4,600/- Hence, that has to be calculated accordingly. Hence, the loss of income has to be calculated by taking into consideration of the period of treatment for six months. The tribunal has calculated the loss of income from 18.10.2000 to 17.05.2001 whereas it is the evidence of P.W.1 that he was taking treatment as in-patient from 18.10.2000 to 03.11.2000 hence, the loss has to be calculated for three months. The loss of income has to be taken only for three months and accordingly, it has to be calculated as $\text{Rs.4,600} \times 3 = \text{Rs.13,800/-}$

17. The further argument specifically made for the sum awarded under mental agony that caused to the family members at Rs.5,000/- is not justified one and additional award amount towards transport is also improper.

18. The sum awarded for 'mental agony' at Rs.30,000/- is also on the higher side and it has to be modified as Rs.10,000/-. In the absence of any 'promotional prospects', the sum awarded is Rs.1,00,000/- is improper and the sum awarded under 'pain and suffering' at Rs.25,000/- is quite reasonable. The sum awarded under 'permanent disability' at 55% is highly

excessive. When there is only fracture injury and that has to be taken as 35% and the sum is modified to Rs.35,000/- as against Rs.50,000/- and there is also no future loss of earning capacity since the claimant has joined duty and therefore, the disability in no way has caused any inconvenience or reduced his efficiency in doing his job. Hence, the sum awarded under the said head is also not proper. Hence, the modified award is also as follows:-

Head	Amount awarded by the tribunal	Modified Amount
The loss of earning for the period from 18.10.2000 to 17.05.2000	Rs. 30,000/-	Rs. 13,800/-
Transport Expenses	Rs. 2,000/-	Rs. 2,000/-
Nourishment	Rs. 3,000/-	Rs. 3,000/-
Damage to dress and cycle	Rs. 1,000/-	Rs. 1,000/-
Pain and suffering to family members	Rs. 5,000/-	---
Additional transport expenses	Rs. 5,000/-	---
Mental agony to the petitioner	Rs. 30,000/-	Rs. 10,000/-
Loss of promotional prospects	Rs. 1,00,000/-	---
Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
Permanent disability	Rs. 50,000/-	Rs. 35,000/-
Loss of earning	Rs. 50,000/-	Rs. 15,000/-
Total	Rs. 3,01,000/-	Rs. 1,04,800/-

19. In view of the above said modification, the compensation awarded by the Tribunal is modified to Rs.1,04,800/- along with interest 9% and accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. The appellant/Insurance Company shall deposit the said amount to the credit in M.C.O.P.No.5048 of 2000 before the trial Court and

thereafter, recover the same from the owner of the vehicle. The claimant are permitted to withdraw the amount of compensation so deposited before the Tribunal, by filing appropriate petition before the Tribunal.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

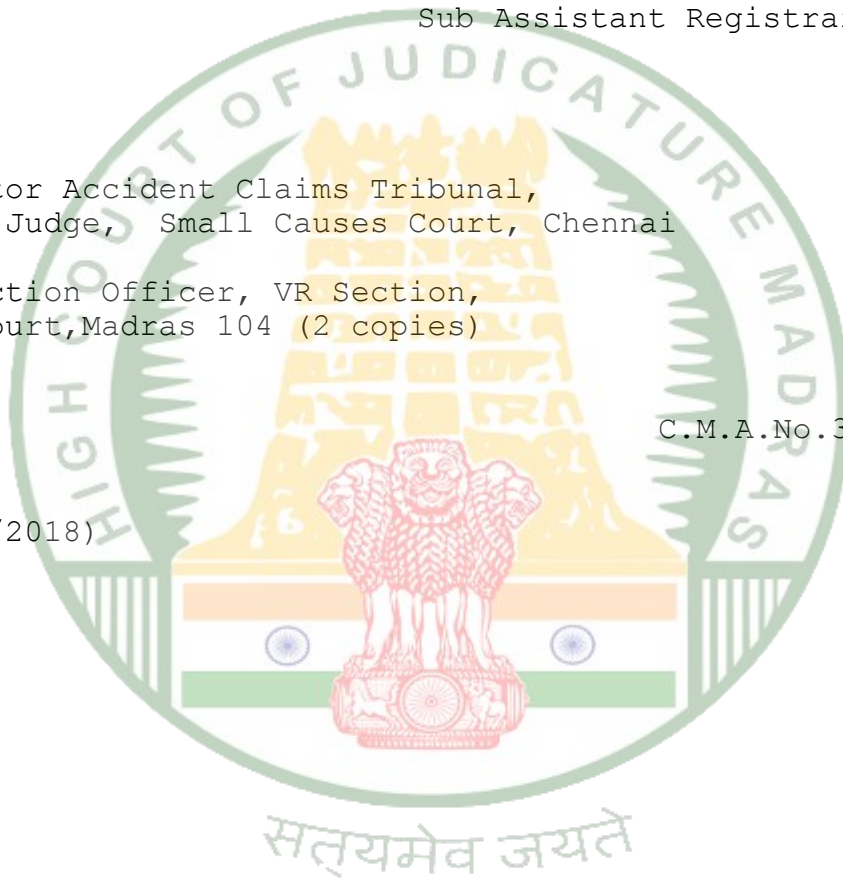
To

1. The Motor Accident Claims Tribunal,
The II Judge, Small Causes Court, Chennai
2. The Section Officer, VR Section,
High Court, Madras 104 (2 copies)

C.M.A.No.3976 of 2005

KGK (CO)

GMV (19/12/2018)



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