IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3040 of 2011

K.Alagesan ... Appellant/Petitioner

..vs..

1.D.Jayakumar
2.K.Palanisamy
3.The Branch Manager,
ICICI Lambard General Insurance Co. Ltd.,
256-258, J.B. Towers, First Floor,
Sathy Road, Mambadi,
Erode.
4.P.Loganathan ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 09.06.2011, made in MCOP.No.181 of 2010 on the file of the Motor Accident Claims Tribunal/(Second Additional Sub Court), Erode.

For Appellant	:	Mr.N.Manoharan
Respondents	:	Mrs.R.Sree Vidhya for R-3
Respondents	:	No Appearance
1, 2 and 4	:	Set Exparte before Tribunal

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal, dated 09.06.2011, made in MCOP.No.181 of 2010 on the file of the Motor Accident Claims Tribunal/ (Second Additional Sub Court), Erode, the petitioner/claimant filed this present appeal to enhance the award passed by the Tribunal.

2.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3.The case of the petitioner is that on 05.03.2008 at about

5.30 p.m., the Mini Door Van bearing Registration No.TN-33-R-0321, in which the petitioner was working as a cleaner, was proceeding from Erode to Vellore and the petitioner was seated near the driver seat as cleaner. The van was driven by the first respondent. As the Van reached the Kallukadai bus stop, due to high speed, the driver of the van lost control and the van capsized on the left side of the road. The accident occurred due to the negligence of the first respondent driver only. The petitioner who was aged 39 years suffered bone fracture and multiple grievous injuries all over his body. The petitioner who was employed as cleaner in the Mini Door Van was earning Rs.4,500/- per month. Due to the injuries suffered, he is not in a position to attend to his normal avocation. Thus, the petitioner sought for a sum of Rs.8,00,000/- as compensation from the respondents.

4.On the other hand, opposing the claim petition, the 3rd respondent-Insurance Company by filing counter and additional counter contends that while the Insurance policy was in the name of the second respondent on the date of the accident, the R.C. Book was transferred in the name of the 4th respondent on 05.10.2007 itself. The accident occurred only on 05.03.2008, as the vehicle was used without effecting name transfer in the policy, it amounts to violation of policy condition. As such, the petitioner is not a 3rd party to the respondent insurer. There is no insurance coverage for the petitioner who travelled in the vehicle itself. Thus, the third respondent seeks dismissal of the petition.

5.The other respondents remained exparte.

6.Before the Tribunal, the petitioner examined P.W.1 to P.W.3, produced documents Ex.P1 to Ex.P17 to prove his claim. The respondents examined R.W.1 to R.W.3, produced documents Ex.R1 to Ex.R4 to contradict the claim of the petitioner.

7.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent van driver alone caused the accident, passed an award for a sum of Rs.4,65,000/- as compensation payable by the respondents 1 and 4 to the petitioner, while dismissing the petition against the respondents 2 and 3. As such, not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with the present appeal.

8.Heard the learned counsel appearing for the appellant/claimant and the learned counsel appearing for the third respondent-Insurance company and perused the materials available on record.

9.The learned counsel appearing for the appellant/claimant contends that the Tribunal erred in exonerating the third respondent Insurance company and fixing the liability on the 4th respondent owner of the vehicle only. The Tribunal failed to note that there was a valid policy coverage for risk of third parties and the right of the victim in the road accident, to claim compensation is a statutory one. Even assuming the insurer was not liable, he has to satisfy the award first and then recover the same from the owner of the vehicle. The Tribunal failed to consider the fact that the petitioner suffered 38% disability and incurred medical expenses of Rs.5,00,000/-. The amount provided under different heads is very nominal. Thus, the petitioner seeks to enhance the quantum of the award by entertaining the appeal.

10.Per Contra, the learned counsel appearing for the third respondent Insurance Company contends that there is no need or necessity to modify the award passed by the Tribunal. Thus, the third respondent Insurance Company sought for dismissal of this appeal.

11.The petitioner clearly stated about the manner in which the accident occurred on 05.03.2008, while deposing as P.W.1 before the Tribunal. According to P.W.1, the accident occurred only due to the negligence of the first respondent driver. The Police also registered Ex.P1 FIR against the first respondent only. As per Ex.P4 Motor Vehicle Inspector's Report, there was no mechanical defect in the vehicles involved in the accident. The police after investigation laid charge sheet against the first respondent driver only as evidenced by Ex.P5 copy of the complaint. The police also produced the copy of the rough sketch of the occurrence spot as well as observation mahazar prepared by the police as Ex.P2 and Ex.P3. The said documents also corroborates the finding of the accident given by the petitioner. It is clear from the rough sketch Ex.P2 that the accident took place at the spot where the road running South to North was turning towards east to west. Thus, it is clear from the document produced by the petitioner and also the contents of Ex.P1 FIR and Ex.P5 Charge Sheet that the negligence of the first respondent only caused the accident. There is no contra evidence on the side of the respondents to disprove the version of the accident given by P.W.1. In such circumstances, the Tribunal correctly concluded that the negligence of the first respondent only caused the accident.

12.The petitioner states that he was working as cleaner in the second respondent Mini Door Vehicle, earning Rs.4,500/- per month. However, the petitioner has not produced any proof for the same. The petitioner stated that he suffered bone fracture and also grievous injuries. To prove the same, he produced Ex.P6 wound certificate. He also produced Ex.P10 discharge summary to show that he under went treatment as inpatient for several days. It is clear from Ex.P6 wound certificate and Ex.P10 discharge summary as well as ExP17 Medical reports that the injuries suffered by the petitioner is grievous in nature.

13.The Doctor, who deposed as P.W.2 assessed the disability at 38%. According to P.W.2, the petitioner has suffered fracture. However, the Doctor has not produced any working sheet along with Ex.P14 disability certificate issued by him. P.W.2 also has not given treatment to the petitioner. He only stated that on physical examination of the petitioner and by analysing Ex.P15 X-ray, he has given the disability certificate. As such, there is no proper explanation by P.W.2 Doctor as to how he fixed the disability at 38%. Therefore, the Tribunal is justified in fixing the disability at 30% instead of 38% fixed by P.W.2 Doctor. In such circumstances, considering the disability suffered by the petitioner, it will be appropriate to compensate him at Rs.2,000/- per percentage. Thus, the disability compensation will be Rs.2,000/- x 30% = Rs.60,000/-.

14.The petitioner claims that by working as cleaner in the Mini Door Van he was earning Rs.4,500/- per month. However, as there is no proof for the same, his monthly income is fixed at Rs.3,000/-. As the petitioner suffered physical pain and suffering due to the injuries suffered in the accident, he would not have attend to his work at least for a period four months. Hence, the loss of earning during treatment period will be Rs.3,000/- x 4 = Rs.12,000/-. The petitioner produced Medical Bills Ex.P7, Ex.P8 and Ex.P16 and prescriptions as Ex.P13. The total amount of the Medical Bills comes to Rs.4,05,900/-. Thus, towards medical expenses, a sum of Rs.4,06,000/- is provided. The Tribunal has provided a sum of Rs.10,000/- towards pain and sufferings. However, as the same is very meager, a sum of Rs.20,000/- is provided towards pain and suffering instead of Rs.10,000/- awarded by the Tribunal. The Tribunal has awarded a sum of Rs.5,000/- towards extra-nourishment, Rs.5,000/- towards transport charges. The same appears to be proper and needs no interference. Accordingly, the total sum of Rs.4,65,000/- awarded by the Tribunal is enhanced to Rs.5,08,000/-.

15.It is contended by the 3rd respondent Insurance Company that the policy was in the name of the first respondent, while the vehicle was transferred in the name of 4th respondent on 05.01.2007 itself. Thus, when the accident took place on 05.03.2008, the name of the policy holder was not transferred and the same will amount to violation of police condition. Hence, as violation of policy condition is committed by the first and 4th respondent, the third respondent/Insurance Company seeks to dismiss the appeal against them.

16.However, refuting the same, the learned counsel appearing for the appellant/petitioner/claimant contends that if the policy coverage was in force, it will not matter as to who was the owner of the vehicle on the date of accident and name transfer was effected. In support of the same, he relied upon the Apex Court ruling reported in 2018 (1) LAW WEEKLY 153 in FIRDAUS Vs. ORIENTAL INSURANCE CO. LTD., AND OTHERS, wherein it has held as follows:-

> "13. Even if it is assumed for the sake of arguments that vehicle was transferred from defendant No.1 to defendant No.4, there will be no consequence with regard to liability of Oriental Insurance Co. Ltd., to pay compensation. The issue has been answered in Rikhi Ram case(Supra) also. The vehicle involved in the accident in the aforesaid case was insured by another owner, namely M/s.Bhagwan Rai Amrit Lal, which was purchased by two other persons subsequently. No intimation of transfer was given to Oriental Insurance Co. Ltd. The question arose in the above case, as to whether in absence of intimation of transfer to the Insurer the liability to pay the compensation to the third party shall cease. This Court held that even if vehicle stand transferred to the name of another person, the liability of insurer to pay compensation to their party shall no cease......"
>
> 15.Section 157 of the Motor Vehicles Act, 1988 clinches the issue. Section 157 sub-Section (1) contains the deeming provision that "the certificate of insurance and the policy described in the certificate shall be deemed to have been transferred in favour of the person to whom the motor vehicle is transferred with effect from the date of this transfer." Sub Section (1), Section 157 which is relevant is quoted as below"........
>
> "16.In view of the above, it is not necessary for us to give any concluded finding regarding ownership of the vehicle No.HR 2 G 1875 on the date of accident for the purpose of this case. In either of the eventuality, i.e., whether defendant No.1 was the owner of the vehicle on the date of the accident, or defendant No.4 was the owner of the vehicle, the liability of Oriental Insurance Co. Ltd.,

> continues and Workmen compensation Commissioner has rightly fastened the liability on the the Insurance Company. The remand made by the High Court to find out as to whether Parvez Khan was an employee of the defendant No.1 or not, was unnecessary."

In the case on hand, admittedly, the vehicle was insured with the third respondent and the same was in force on the date of accident. As such, whoever be the owner of the vehicle, the third respondent insurer cannot avoid its liability. As such, they are liable to pay compensation to the petitioners.

17.In the light of the above said discussion, even assuming the name transfer was not effected on the date of accident, since the Insurance Policy was in force, the third respondent cannot avoid its liability to pay compensation to the petitioners who are third parties. Therefore, the Tribunal is not justified in dismissing the claim petition against the Insurance Company. For the reasons stated above, the third respondent Insurance Company is also liable to pay the compensation.

18.The learned counsel appearing for the third respondent Insurance Company contends that at th time of accident, it is claimed by the petitioner that he was travelling as cleaner in the Mini Door Van bearing Registration No.TN-33-R-0321 and he was seated near the driver seat. As stated earlier, the negligence of the Tractor driver alone resulted in the accident. The driver of the Tractor by permitting the petitioner to travel in the said vehicle as cleaner has committed violation of policy condition. As such, the contention of the 3rd respondent Insurance Company that they are entitled to recover the amount from the owner of the vehicle in view of violation committed by him is to be entertained. As such, the third respondent Insurance Company is entitled for recovery of the award amount from the owner of the vehicle after satisfying the award at the first instance.

19.In the result, this appeal is partly allowed. No costs. The amount of Rs.4,65,000/- awarded by the Tribunal dated 09.06.2011, made in MCOP.No.181 of 2010 on the file of the Motor Accident Claims Tribunal/(Second Additional Sub Court), Erode is enhanced to Rs.5,08,000/-. The 3rd respondent/Insurance Company is directed to deposit the entire Award amount of Rs.5,08,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order and then recover the said amount from the second respondent/owner of the vehicle bearing

Registration No.TN-33-R-0321. On such deposit, the appellant/petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

rrg

To

1.The II Additional Sub Court,
Motor Accident Claims Tribunal,
Erode.

2.The Section Officer,
V.R. Section,
High Court, Madras -104.

+1cc to Mr.N.Manokaran, Advocate SR.No.52038
+1cc to Mr.R.Sreevidhya, Advocate SR.No.52921

C.M.A.No.3040 of 2011

GMY(25/09/2018)