IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.673 of 2015
and M.P.No.1 of 2015

A.Irudhayam Charles ..Appellant/Petitioner

VS

1.R.Thirunavukkarasu
2.K.Kavitha
3.M/s.Chozhamandalam MS
General Insurance Company Ltd.,
No.936, Kala Rathi Building
Avinashi Road
Coimbatore 641 018 ..Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 30.11.2011 made in M.C.O.P.No.807 of 2010 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court-1, Coimbatore.

For appellant	:	: Mr.C.Veeraraghavan
For Respondents	:	:
for R1	:	: Mr.H.Rajasekar
for R3	:	: Mr.M.B.Gopalan

J U D G M E N T

The Appellant who is the injured claimant before the Tribunal has filed this appeal against the judgment and decree dated 30.11.2011 made in M.C.O.P.No.807 of 2010 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court-1, Coimbatore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioner is that on 24.11.2009 while the Petitioner was returning home from his workspot riding two wheeler bearing Reg.No.TN-37-AY-1023 at normal speed along with his cousin as pillion rider, in the Avinashi Road, while going near R.G.Pudur, S.N.Industries, at 14.30 hours, the 1st respondent driven vehicle bearing Reg.No.TN-37-PC-5091 came at

high speed, dashed against the two wheeler causing him fracture and other multiple injuries. The accident occurred only due to negligence of the 1st respondent who was the driver of the vehicle belonging to the 2nd respondent and insured with the 3rd respondent. Due to the injuries suffered in the accident, the petitioner who was aged 35 years old and was working as a Building Labourer is unable to attend to his work as he used to and therefore, sought for a sum of Rs.4,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur due to negligence of the 1st respondent driver. The 2nd respondent/owner of the vehicle has allowed the first respondent to drive the vehicle even though there was no valid driving licence for the said person. The Police have subsequently registered a case against the 1st respondent u/s.3 of the Motor Vehicles Act in addition to Sections 279 and 337 of IPC Therefore, the 2nd respondent cannot be a beneficiary under the Policy with 3rd respondent. As such, the 3rd respondent has no liability to pay any compensation. The accident occurred due to negligence of the rider of the two wheeler viz., the claimant\injured petitioner who suddenly stopped the two wheeler without any signal and invited the accident. The Petitioner contributed to the occurrence. The amount claimed under different heads is very excessive. Thus, the 3rd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and produced documents Ex.P.1 to Ex.P.13 to prove his claim. On the side of the 3rd respondent, R.W.1 was examined, documents Ex.R.1 and Ex.R.2 was marked. The Tribunal, after analysing the evidence on record found the negligence of the 1st respondent driver alone caused the accident, passed an award for a sum of Rs.1,08,000/- directing the driver and the owner of the offending vehicle who are the 1st and 2nd respondents herein to pay the said amount in equal proportion and dismissed the Petition against the 3rd respondent/Insurance company. Aggrieved over the said finding, the Petitioner/appellant has come forward with the present appeal.

5. Heard both sides.

6. The learned counsel for the Appellant/Petitioner contended that the Petitioner worked as a Centring Worker in Building construction, earning Rs.350/- per day. Due to the fracture and injury suffered, he is unable to work, which resulted in loss of income to him. The Tribunal failed to consider Ex.P.6 to Ex.P.13 Medical Records properly and failed to adopt multiplier method to compensate the Petitioner. The Tribunal ought to have fixed the liability on the 3rd

respondent/Insurance company as the claimant is the third party. Thus the Petitioner/claimant seeks enhancement of the award amount and also prayed to direct the 3rd respondent/Insurance company to pay the compensation amount, by entertaining the appeal.

7. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the plea of the Petitioner/claimant is unsustainable and sought for dismissal of the appeal.

8. The Petitioner who deposed as P.W.1 stated that on 23.11.2009, while he was returning home from his work spot in his two wheeler, around 2.30 hours, while he was going near R.G.Pudur, S.N.Industries the 1st respondent driven Minidoor auto bearing Reg.No.TN-37-AY-1023 came at high speed, dashed against the two wheeler causing him multiple injuries. The Police registered Ex.P.1-FIR against the 1st respondent only. After completion of investigation, the Police also filed Ex.P.2/charge sheet against the 1st respondent. The Rough sketch of the occurrence spot is produced as Ex.P.3. It is evident from the said document as well as the oral evidence of P.W.1 that the accident occurred due to negligence of the 1st respondent driver only. It is clear from Ex.P.4 and Ex.P.5-M.V.I.Report that there was no mechanical defect in either of the two vehicles involved in the accident. Therefore, it is clear from P.W.1 oral evidence and contents of Ex.P.2-Charge Sheet that the accident occurred only due to negligence of the 1st respondent. The finding of the Tribunal to that effect is correct and the same is confirmed.

9. It is clear from the evidence of R.W.1 that the vehicle bearing Reg.No.TN-37-PC-5091 was insured with them and the same belongs to the 2nd respondent. R.W.1 also stated that the owner of the vehicle permitted the 1st respondent to drive the vehicle even though he did not possess any valid driving licence. Thus, it is clear that on the date of accident, the 1st respondent did not possess valid driving licence and as per Ex.P.1-FIR the Police have registered case against the 1st respondent only. On that ground, the Tribunal has exonerated the 3rd respondent/Insurance company from paying any compensation as there is violation of policy condition. However, it is clear from number of decisions and the ratio laid down by this court as well as Apex court that if any person without driving licence is permitted to drive the vehicle, while valid insurance coverage was in force, the Insurance company is bound to pay the compensation at first instance and then to recover the same from the owner of the vehicle. As such, the conclusion of the Tribunal exonerating the 3rd respondent/Insurance company is unsustainable and the same is set aside.

10. As insurer of the vehicle bearing Reg.No.TN-37-PC-5091, the 3rd respondent is bound to satisfy the award at first instance and then to recover the same from the 1st and 2nd respondents.

11. The Petitioner states that he was aged 35 years and was working as Building Labourer, earning Rs.8,500/- per month. There is no proof for the earning of the Petitioner. Hence, the Tribunal fixed the notional monthly income of the Petitioner at Rs.5000/- per month. Considering the nature of injury and that the Petitioner would not have attended to his work atleast for 3 months, the Tribunal awarded Rs.15,000/- (Rs.5000/- x 3) towards loss of income during the period of treatment. The Petitioner stated that he suffered multiple fracture and underwent treatment as inpatient from 24.11.2009 to 11.12.2009 at CMC Hospital, Coimbatore and again from 26.12.2009 to 31.12.2009 at Richmond Hospital, Coimbatore. In the said hospital, the Petitioner underwent surgery in his right hand and plate was fitted. Taking into account the evidence of P.W.1 and Ex.P.8-Discharge summary, Ex.P.6-Accident Register Copy, the Tribunal provided Rs.25,000/- towards Pain and suffering. As per Ex.P.12, Medical Bills, Rs.3500/- has been provided. The Tribunal also provided Rs.50,000/- towards Permanent disability, Rs.10,000/- towards removal of plate, Rs.2000/- towards transportation, Rs.2000/- towards Nutritious food, Rs.500/- towards damage to clothes. In view of the injuries suffered by the Petitioner, the above said award amount appears to be normal and appropriate.

12. The Petitioner contends that he has undergone continuous treatment incurring heavy expenses and produced medical bills as additional documents. The said application in CMP.No.1 of 2015 is taken up along with CMA.No.673 of 2015 and on perusal of the medical bills, this court is satisfied with the same and accordingly the petition is allowed. The said documents are ordered to be received and the same are marked as Ex.P.14 to Ex.P.31. It is clear from the same that the Petitioner has incurred expenses to the tune of Rs.42,338/-. However, considering the overlapping, this court is inclined to restrict the Medical expenses to Rs.32,000/-.

13. As stated earlier, the Tribunal has awarded various amounts under different heads totalling Rs.1,08,000/- as compensation. In view of the discussion made earlier, the said compensation amount appears to be just and appropriate. As such, while confirming the quantum of the award passed by the Tribunal under different heads, a sum of Rs.32,000/- has to be added as Additional/Future medical expenses as evidenced by Ex.P.14 to Ex.P.31-Medical bills produced as additional documents. Thus, the claimant/petitioner is entitled for a further sum of Rs.32,000/-. Thus, the compensation awarded by the Tribunal is

modified by this court as under:-

Total compensation Amount awarded by the Tribunal	- Rs	1,08,000/-
Compensation vide Additional document allowed by this Court	- Rs.	32,000/-
Total	-	Rs.1,40,000/-

The Point is answered accordingly.

14. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.1,40,000/- from Rs.1,08,000/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(iv) The respondents are jointly and severally liable to pay the award amount. However, due to violation of policy condition by the owner, the 3rd respondent/Insurance company is liable to pay the compensation at the first instance and shall recover the award amount from the insured/2nd respondent.

(v) The 3rd respondent/Insurance company shall deposit the modified award amount with interest and cost, within a period of six weeks from the date of receipt of a copy of this order, deducting the amount already deposited.

(vi) On such deposit, the appellant/claimant is entitled to withdraw the same along with accrued interest. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs. Consequently, connected MPs are closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Additional District and Sessions Court,
Fast Track Court-1, Coimbatore.

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

+1 cc to Mr.C. Veeraraghavan, Advocate sr 46446.
+1 cc to Mr.M.B. Gopalan, Advocate sr 46676

SPD(CO)
SP(10/10/2018)