IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3762 of 2010 and

M.P.Nos.1 of 2010 and 1 of 2014

and
Cross Objection No.15 of 2018

C.M.A.No.3762 of 2010
M/s.ICICI Lombard General Insurance Co. Ltd.,
Swarnambigai Plaza,
S.F.No.6/5, Block No.7,
Ward, 7-C, Omalur Main Road,
Near Bus Stand,
Salem-636 001. ... Appellant/2nd Respondent

..vs..

1.Muni @ Munian ... Respondent/Cross Objector
2.A.Mariappan ... Respondent/Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 21.04.2010 made in MCOP.No.281 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Sankagiri.

Cross Objection No.15/2018:

Muni @ Munian ... Cross Appellant

vs

1.ICICI Lombard General Insurance Co. Ltd.,
Swarnambigai Plaza,
S.F.No.6/5, Block No.7,
Ward, 7-C, Omalur Main Road,
Near Bus Stand,
Salem-636 001.

2.A.Mariappan ... Respondents

Cross Objection is filed Under order 41 rule 22 of CPC praying to set aside the order and Decreetal order dated 21/04/2010 in MCOP.No.281/2008 passed by the Motor Accident Claim Tribunal (Sub Court) ,Sankagiri and enhance the compensation.

For Appellant & cma.3762/10 in 1st respondent in cross objection	:	Mrs.R.Sree Vidhya
Respondent -1 in cma3762/10 and for Cross objector	:	Mr.C.Kulanthaivel
Respondent 2	:	exparte in Lower court

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 21.04.2010 made in MCOP.No.281 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Sankagiri, the present appeal has been filed by the second respondent Insurance Company to set aside 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 06.05.2008 at about 10.30 a.m., while the petitioner along with four other persons were travelling in a Pick up Mini Van bearing Registration No.TN-30-X-9180 belonging to the first respondent and insured with the second respondent, while going in Edappadi to Jalakandapuram Main Road, near Iruppalli Vetnary Hospital, Kandamariammal Koil, as the van was driven at high speed in a rash and negligent manner, dashed against the two wheeler bearing Registration No.TN-30-X-1319, Consequently, the driver lost control and the van capsized. Due to the said incident, the petitioner suffered multiple grievous injuries on his left hand resulting in amputation and he suffered abrasion in the right side region, abrasion on the anterior aspect of the both knee joint and crush injury in left fore-arm with non-viability below elbow left with three places and fracture of both bones and multiple simple injuries all over the body. Immediately after the accident, the petitioner took first aid in Government Hospital, Jalakandapuram and thereafter in a private hospital, Salem as in patient from 06.05.2008 to 22.05.2008. The petitioner suffered permanent disability. Due to the injuries suffered, he is unable to attend to his normal avocation of load man and coolie. Previously, he was earning a sum of Rs.7,500/ per month and due to the injuries suffered, he is unable to do any work and suffering from total loss of income. Thus, the petitioner sought for a sum of Rs.7,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4.On the other hand, opposing the claim petition, the second respondent Insurance Company by filing counter contends that the petitioner travelled as a passenger in the goods vehicle and as such no liability can be fixed on the second respondent. As the petitioner travelled as gracious passenger, there is no statutory liability on the second respondent to pay any compensation. The driver of the van did not possess any valid licence. The involvement of the vehicle bearing Registration No.TN-30-X9180 in the accident is denied. The age, occupation, monthly income of the petitioner and the nature of injuries suffered as alleged in the petition is denied. The amount claimed by the petitioner is highly excessive. Thus, the second respondent Insurance Company sought for dismissal of the petition.

5.Before the Tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, R.W.1 was examined and documents Ex.R1 to Ex.R3 was produced to disprove the claim of the petitioner.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent van driver only caused the accident, passed an award for a sum of Rs.3,83,381/- as compensation to the petitioner. As the driver of the offending vehicle did not possess valid driving licence, permitted the second respondent Insurance Company to pay the Award amount and then recover the same from the first respondent. Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has come forwarded with this present appeal. While being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with the above said Cross Objection.

7.Heard the learned counsel appearing for the appellant-Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8.The learned counsel appearing for the appellant Insurance Company contends that the Tribunal failed to consider the evidence on record properly and passed an Award for the higher amount. As the pick up Mini Van was prohibited from carrying passengers, the second respondent Insurance Company is not liable to pay any compensation. The petitioner was not travelling with the goods in the vehicle and as such they are not liable to pay compensation. As the gracious passengers are not covered the policy, the Tribunal is not correct in directing the second respondent to pay the award amount first and then to recover the same from the first respondent. As such, the second respondent sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9.Per contra, the learned counsel appearing for the petitioner/claimant/cross objectors contends that the Tribunal passed an Award for very meager amount without considering the age of the injured and the nature of injuries suffered by him. The petitioner/claimant left hand has been amputated and he cannot do any job in future for his livelihood. Thus, the Tribunal ought to have fixed the loss of earning capacity at 100%, but fixed the same at 70% only. The Tribunal deducted 1/3rd of the income, even though the petitioner himself is injured claimant, the same is not proper. The amount provided under other heads is very nominal. Thus, the petitioner/claimant sought for enhancement of the Award amount by entertaining the Cross Objection and to dismiss the appeal filed by the second respondent Insurance Company.

10.The fact that the petitioner was injured in the accident alleged in the petition and the first respondent vehicle was involved in the accident is admitted. The fact that the petitioner has travelled in the said vehicle at the time of the accident is also admitted. However, the learned counsel appearing for the second respondent Insurance Company contends that the petitioner travelled as gracious passenger in the first respondent vehicle, which met with an accident and therefore there is no statutory liability, on the second respondent Insurance Company to pay any compensation to the petitioner. The petitioner who deposed as P.W.1 clearly stated that on 06.05.2008 at about 10.30 a.m., while he was travelling in the Mini Van bearing Registration No.TN-30-X-9180 as a load man to pick up coconuts, the accident occurred and he suffered injuries. The Investigating Officer of the second respondent Insurance Company who deposed as R.W.1 stated that as per the policy conditions, no passenger is permitted to travel in the Mini Van and the petitioner along with 4 persons travelled in the said vehicle bearing Registration No.TN-30-X-9180 without any goods. Thus, the respondent contends that the petitioner travelled in the offending vehicle as unauthorised passenger. It is clear from the evidence of R.W.1 that the driver of the van did not possess valid licence and the copy of notice sent by them to the owner as well as the driver seeking details of licence is Ex.R2 and Acknowledgment Card is Ex.R3. It is stated that there was no reply or response from the owner or the driver to the same.

11. Pointing it out, the learned counsel appearing for the second respondent contends that the driver of the first respondent van did not possess valid licence and as he carried the petitioner as unauthorised passenger, it amounts to clear violation of policy condition. However, R.W.1 Investigating Officer admitted in his cross examination that in Ex.P1 FIR is clearly stated that the petitioner was travelling in the said van as coolie to load the coconuts. Admittedly, two persons were allowed to travel in the said van. As such it is clear that the petitioner travelled in the vehicle as a load man and therefore the contention of the respondent that the petitioner travelled as gracious passenger is unsustainable and the plea of the second respondent in that regard is unsustainable.

12. P.W.1 has clearly stated about the manner in which the accident occurred and the police also registered First Information Report against the first respondent van driver only. There is no contra evidence particularly eye witness account produced by the respondent to disprove the petitioner claim. As such, the Tribunal is correct in fixing the entire negligence on the part of the first respondent vehicle driver for the accident.

13. Admittedly, the first respondent vehicle was insured with the second respondent and the same was in force on the date of the accident as evidenced by Ex.R1 Insurance Policy copy. However, the first respondent has not produced any proof of the driver of the first respondent vehicle possessing valid driving licence, except Ex.R2 notice issued by the second respondent. In such circumstances, it is clear that there is no proof of the driver of the first respondent vehicle possessing valid driving licence. Thus, permitting a person to drive the vehicle without licence will clearly amount to violation of policy condition. Therefore, the Tribunal correctly concluded that the second respondent, in view of the violation of policy condition, is entitled to recover the award amount from the first respondent owner after fulfilling the award amount, the same is just and proper and the same needs no interference.

14. The petitioner has suffered abrasion in the right side region, abrasion on the anterior aspect of the both knee joint and crush injury in left fore-arm with non-viability below elbow left with three places and fracture of both bones and multiple simple injuries all over the body. According to the petitioner he was working as a load man and as his left hand above knee is amputated, he was not be in a position to do any work. Further, due to the injuries suffered, he is suffering from continuous headache and loss of memory power. The petitioner stated that he was aged 50 years at the time

of the accident and by working as a load man was earning sum of Rs.7,500/- per month. To prove the injuries suffered by the petitioner, P.W.2 Doctor was examined and he has stated that the left arm of the petitioner is amputated to the length of 11 cms. The usage of left arm is reduced. P.W.2 Doctor also stated that due to the injuries suffered, the petitioner is having 70% disability and the certificate issued by him is Ex.P7. The X-ray taken by him is produced as Ex.P8. In such circumstances, the Tribunal keeping in mind the fact that the petitioner's left hand is amputated, accepted the evidence of P.W.2 and fixed the disability suffered by the petitioner at 70%.

15. The petitioner stated that he was earning a sum of Rs.7,500/- per month. The person who deposed as P.W.3 stated that the petitioner by working as a load man was earning Rs.250/- to Rs.300/- per day. The Tribunal, keeping in mind the above said evidence of P.Ws.1 and 3, fixed the notional income of the petitioner at Rs.6,000/- per month. Considering the fact that the accident occurred in the year,2009 and there is no proof for the monthly earning of the petitioner, it will be appropriate to fix his daily earning at Rs.150/- and as such the monthly income will be Rs.4,500/-. The Tribunal however deducted 1/3rd income towards the personal expenses, but the same is not proper as the petitioner himself is the injured person. As stated earlier, the petitioner having suffered 70% disability and his left arm is amputated, it is clear that he has suffered loss of earning capacity. As the petitioner was aged 55 years, the multiplier to be applied is 11. As such, the loss of earning capacity is calculated as follows:-

Rs.4,500/- x 12 = Rs.54,000/- x 70% = Rs.37,800/- x 11 = Rs.4,15,800/-.

16. Considering the nature of injuries suffered and amputation of left arm, the petitioner having undergone treatment for a length of period as evidenced by Ex.P4 discharge summary, it will be appropriate to provide Rs.50,000/- towards pain and sufferings. Due to the amputation of left arm, the day to day activities of the petitioner is affected. Thus, a sum of Rs.50,000/- is provided for loss of amenities. Considering the fact that the petitioner suffered permanent disability as evidenced by Ex.P7 disability certificate and undergone treatment as inpatient, he would have need the help of attender at least for the period of two months. Hence, a sum of Rs.20,000/- is provided towards attender charges. Further, consider the nature of injuries suffered by the petitioner and the fact that he took treatment for a long period, a sum of Rs.20,000/- is provided towards extra-nourishment and a sum

of Rs.10,000/- is provided towards transport charges. It is clear from Ex.P3 and Ex.P6 medical bills that the petitioner has incurred medical expenses for a sum of Rs.36,801/- and Rs.32,780/- totalling Rs.69,581/-. He is entitled for the same. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning capacity	2,68,800.00	4,15,800.00
2.	Medical Expenses	69,581.00	69,581.00
3.	Pain and sufferings	15,000.00	50,000.00
4.	Extra nourishment	10,000.00	20,000.00
5.	Transport Charges	10,000.00	10,000.00
6.	Attender Charges	10,000.00	20,000.00
7.	Loss of amenities	-	50,000.00
	Total	3,83,381.00	6,35,381.00

Accordingly, the sum of Rs.3,83,381/- a warded by the Tribunal is modified and the same is enhanced to Rs.6,35,381/-. As such the appeal filed by the Insurance Company is devoid of merits and the same fails. The Cross Objection filed by the petitioner is entertained.

17. C.M.A.No.3762 of 2010

In the result, the civil miscellaneous appeal is dismissed. No Costs. Consequently, connected M.Ps. are closed.

18. Cross Objection No.15 of 2018

In the result. The Cross Objection is allowed. No costs. The amount of Rs.3,83,381/- awarded by the Tribunal dated 21.04.2010 made in MCOP.No.281 of 2008 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Sankagiri is hereby enhanced to Rs.6,35,381/-. The appellant Insurance Company is directed to deposit the entire Award amount of Rs.6,35,381/- 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 the appellant Insurance Company is entitled to recover the same from the 2nd respondent/owner (Ist Respondent in MCOP.No.281/2010) of the offending vehicle. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

As per order dated 29.01.2018 passed in CMP.No.4184 of 2017, the claimant is not entitled to interest for the delay period of 1068 days in filing the Cross Objection. Further, the claimant is directed to pay the Additional Court Fee for the enhanced award amount immediately.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rrg
To

1.The Subordinate Judge
Motor Accident Claim Tribunal,
Sankagiri.

2.The section officer
high court
Madras.

+1cc to Mrs.R.Sree Vidhya , Advocate SR.No.42831
+1cc to Mr.C.KULANTHAIVEL , Advocate SR.No. 42000

C.M.A.No.3762 of 2010
and
Cross Objection No.15 of 2008

ASK(17/09/2018)