IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.08.2019
CORAM:
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
C.M.A.No.1694 of 2003

R.Parthasarathy .. Appellant

Vs.

1.M.Musthafa
2.M/s.New India Assurance Company Limited,
No.63, Madhanagopalapuram, Perambalur. .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.02.2003 made in M.C.O.P.No.271 of 2002 on the file of the Motor Accidents Claims Tribunal, Principal District Court, Perambalur.

For Appellant : Mr.Hajee P.K.Jamal Mohammed
For R2 : Mr.J.Chandran

J U D G M E N T

According to the appellant/claimant, on 17.08.2001, at about 09.30 hours, while he was waiting for taking cement bags at MMS Cement shop on the Perambalur Vadakku Madevi Road, opposite to Ualavar Santhai, a Tempo bearing Registration No.TN65 6888 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and hit him from behind. As a result of the same, the appellant sustained grievous injuries. Stating so, he filed a claim petition claiming a compensation of Rs.2,00,000/-. On consideration of the materials and evidence, the Tribunal has exonerated the second respondent insurance company from its liability and awarded a total compensation of Rs.90,000/- with interest at 9% p.a. from the date of petition, which was directed to be payable by the first respondent/owner of the vehicle to the appellant/claimant. Feeling aggrieved and being dissatisfied with the quantum of compensation so awarded by the Tribunal, the appellant/claimant has filed this appeal seeking enhancement of the same.

2.The learned counsel appearing for the appellant contended that the Tribunal has erred in directing the first respondent to pay the compensation, when the insurance policy issued by the second respondent-Insurance Company was in force at the time of accident. He further submitted that once the driver is having a licence to drive a light motor vehicle, then the nature of that vehicle whether transport vehicle or otherwise, is immaterial. He also submitted that considering the nature of the injuries sustained by the appellant/claimant, the compensation awarded by the Tribunal is inadequate and hence, the same has to be enhanced substantially.

3.Per Contra, the learned counsel for the 2nd respondent/ Insurance Company submitted that the Tribunal, based on the oral and documentary evidence placed before it, has rightly exonerated the second respondent from its liability to pay compensation and hence, the same warrants no interference at the hands of this Court.

4.Heard the learned counsel for the appellant and the learned counsel for the second respondent insurance company and perused the materials available on record.

5.Though the appeal was admitted way back in the year 2003, the appellant has not taken proper steps to serve papers on the first respondent/owner of the vehicle even at this length of time. However, this Court is inclined to proceed with this appeal on merits.

6.There is no dispute with regard to the manner of the accident and hence, the finding of the Tribunal on negligence is hereby confirmed as such.

7.With regard to liability, it was putforth on the side of the second respondent insurance company before the Tribunal that the driver of the offending vehicle did not possess a valid and effective driving licence to drive light goods vehicle, which was a clear-cut violation of the policy conditions and hence, they were not liable to pay compensation. To substantiate the same, R.W.1/RTO official and R.W.2/Executive Officer of the second respondent were examined, according to whom, the driver of the vehicle possess only LMV licence. The Tribunal taking note of the said materials and evidence, has exonerated the insurance company from its liability and directed the first respondent to pay compensation to the appellant, which finding this Court is not inclined to accept. In National Insurance Co.Ltd. Vs. Smt.Sugan Bai & Ors. [II (2003) ACC 349] (DB of Madhya Pradesh High Court), at paragraph 4, it was held as under:

> "4.However, it has not been disputed before us that he was holding a licence to drive private light motor vehicle, but it did not contain an effective endorsement made by the Licensing Authority entitling him to drive a transport vehicle too. However, this point, as has been projected in this appeal has been

squarely covered and answered by a judgment of the Supreme Court reported in VII (1999 SLT 317=II (1999) ACC 363 (SC)=2000 ACJ 319, Ashok v. Oriental Insurance Company, Ltd. In the said case the Apex Court has held that the vehicle in question would remain a light motor vehicle as the vehicle was weighing less than 6000 kgs. and was not carrying any goods at the time of the accident, though the vehicle was designed to be used as a transport vehicle or goods carrier. The Supreme Court has further, while interpreting the words "effective driving licence" held that the same would mean a valid licence both as regards the period and type of vehicle."

In Bhailalbhai Garbabhai Vasava & Anr. Vs. Munikhan Ismailkhan Sayed & Ors. [II (2003) ACC 352] (Gujarat High Court), at paragraph 7, it was held thus:

"7.The learned Advocate for the appellants submitted that as the Honourable Apex Court has accepted similar contention, as was raised by the learned Advocate for the claimant before the Tribunal and has held that once the driver is having a valid licence to drive a particular category of vehicle, namely, light motor vehicle or heavy motor vehicle, merely because there is no endorsement or authorisation to drive a transport vehicle is scored of, it does not take away his ability to drive the vehicle for which he is holding a valid licence. He submitted that further classification of the vehicles in the same category of light motor vehicle, on the basis of use for carrying passengers or goods or on the basis of it being a public vehicle or private vehicle, does not affect the capacity/ability/competence of a driver to drive that category of vehicle. Relying upon the aforesaid decisions of the Honourable Apex Court, he submitted that an endorsement/authorisation in a licence of a person to drive a vehicle belonging to a particular sub-classification, is of no consequence. If it is found that the driver is holding a valid licence to drive a particular category of vehicle, namely, light motor vehicle or heavy motor vehicle, then, irrespective of the fact that he is authorised to drive commercial or transport vehicle, the Insurance Company cannot be exonerated of its liability to reimburse the damage caused to the insured."

In the light of the aforesaid observations and also having regard to the admitted fact that the insurance policy was in force at the time of accident, this Court is of the view that the ground on which, the Tribunal has absolved the insurance company of its liability to pay compensation, is erroneous and hence, the finding of the Tribunal to that effect is liable to be set aside and is accordingly, set aside. Consequently, the first respondent/owner of the vehicle is hereby exonerated from its liability to pay compensation to the appellant/claimant.

8.As regards the quantum of compensation, P.W.1/appellant/ claimant has deposed in his evidence that he sustained fracture in right leg below knee, for which, he took treatment at Government Hospital, Perambalur; and he earned Rs.1,500/- per month by working as Valuer of jewels at Indra Bank, but no authenticated proof was produced to substantiate the same. Ex.P2 is the wound certificate. P.W.2/Dr.Saravanan, who treated the appellant, has assessed his disability at 43%. He further deposed that due to fracture injury, the bones were mal-united in the right leg; the movement of the right knee was restricted to 40%; and the appellant finds discomfort to walk, squat, sit and do his daily work. Ex.P3 is the disability certificate. Having regard to those oral and documentary evidence, the Tribunal has awarded a sum of Rs.43,000/- towards permanent disability, which appears to be just and reasonable and hence, the same is hereby confirmed.

9.However, the Tribunal has not awarded any amount towards loss of earning capacity due to disability. Considering the nature of the injuries and the quantum of permanent disablement sustained by the appellant, this Court is inclined to award Rs.1,00,000/- under this head and is accordingly awarded.

10.That apart, the Tribunal has awarded Rs.40,000/- towards pain and suffering, mental agony and medical expenses, which seem to be slightly on the lower side and hence, the same is hereby enhanced to Rs.50,000/-. However, there is no modification with regard to the award of Rs.2,000/- towards transport expenses and Rs.5,000/- towards attender charges.

11.In view of the above, the compensation awarded by the Tribunal is enhanced from Rs.90,000/- to Rs.2,00,000/-, the break-up details of which, reads as follows:

S. No.	Description	Amount awarded by this Court (Rs.)
1.	Transportation	2,000/-
2.	Attender Charges	5,000/-

3.	Loss of earning capacity due to disability	1,00,000/-
4.	Pain & Suffering, Mental agony and medical expenses	50,000/-
5.	Permanent disability	43,000/-
	Total	Rs.2,00,000/-

As requested by the learned counsel for the second respondent Insurance company, the enhanced sum of Rs.1,10,000/- shall carry interest at 9% p.a. only from the date of filing of this appeal.

12.In the result, this appeal is allowed. No costs. The second respondent insurance company is directed to deposit the entire compensation amount as awarded by this Court, along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the Savings Bank Account of the appellant/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(CS-VII)

// True Copy//

Sub Assistant Registrar

gbi/rk

To

1.The Principal District Judge,
Motor Accidents Claims Tribunal,
Perambalur.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to P.K.Jamal Mohammed, Advocate, 69510.

C.M.A.No.1694 of 2003

RR(CO)
CSR: 11.03.2020