IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1568 of 2009

The Branch Manager,
United India Insurance Co., Ltd.,
Mythili Nivas, 54-A, Palani Road,
Near Agraharam, Dindugal.

... Appellant/2nd Respondent

Vs.

1. Saravanan ...1st Respondent/Petitioner

2. B.Balakumaran ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 29.06.2007 passed in MCOP.No.276 of 2003 on the file of the Motor Accident Claims Tribunal / Sub Court, Dharmapuri.

For Appellant : Mr.S.S.Arunkumar

For Respondents : No appearance

JUDGMENT

The Branch Manager, United India Insurance Company Limited, Dindugal, the 2nd respondent in MCOP No.276 of 2003 on the file of the Subordinate Judge/Motor Accident Claims Tribunal, Dharmapuri has filed the present appeal under Section 173 of the Motor Accident Claims Tribunal.

2. The first respondent/claimant filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 06.09.2003. The case of the claimant is that on 05.09.2003 at about 23.45 hours, when he was travelling as a load man along plantain leaves in a goods lorry bearing registration No.TN49-X-6465, near Semmadai, Hosur, the driver of the lorry drove the vehicle rashly and negligently, as a result of which he was thrown out from the lorry and sustained grievous injuries all

over his body. According to the claimant, the rash and negligent driving of the driver of the lorry was the cause of accident and that since the owner of the vehicle (2nd respondent) insured his lorry with the appellant, both of them are jointly and severally liable to pay compensation to him.

3. The learned Subordinate Judge/Motor Accident Claims Tribunal Dharmapuri, after analysing the evidence on record, awarded a compensation of Rs.3,47,175/- to the claimant together with interest at the rate of 7.5 % per annum. Aggrieved over the orders passed by the Tribunal, the insurance company has filed the present appeal.

4. Mr.S.S.Arunkumar, learned counsel appearing for the appellant contended that since the claimant is a gratuitous passenger and he was not sitting within the seating capacity of the vehicle, the insurance company is not liable to pay compensation to him. His next contention is that even though the claimant had sustained a fracture on his " metacarpal bone on left hand", the Tribunal had wrongly applied multiplier method and awarded an exorbitant amount of Rs.3,47,175/- as compensation to the claimant. Therefore, he prayed for scaling down the compensation awarded by the Tribunal.

5. In the decision in National Insurance company Limited Vs. Baljit Kaur and others reported in 2004(1) TNMAC 1 (S.C.), the Honourable Supreme Court has held that even though the insurance company cannot be held liable to pay compensation to the gratuitous passenger as per the law laid down in the decision in New India Assurance Company Vs. Satpal Singh, reported in 2000(1) SCC 237, the said decision was over ruled by the Supreme Court in the decision in New India Assurance Company Limited Vs. Asha Rani 2003(2) SCC 223, which was followed subsequently in the decision in Oriental Insurance Company Limited Vs. Devireddy Konda Reddy reported in 2003(2) SCC 339. It is further held that inspite of the amendment of the provisions contained in Section 147 of the Motor Vehicles Act, the law laid down in New India Assurance Company Limited Vs. Asha Rani reported in 2003(2) SCC 223 (cited supra) shall have only prospective effect.

6. The law laid down in National Insurance company Limited Vs. Baljit Kaur and others reported in 2004(1) TNMAC 1 (S.C.) (cited supra) was followed by the learned Single Judge of this court in National Insurance company Limited Vs. N.Thenvelan and others reported in 2019(2) TN MAC 251, wherein, it is held that even though the position of law is in favour of the insurance company from paying compensation to a gratuitous passenger, the law laid down in Asha Rani case (cited supra) will have only prospective effect i.e. from 06.01.2014 and that

for cases of erstwhile accidents, the position of law is that the insurance company shall have to pay compensation to the claimant and then recover the same from the owner of the vehicle.

7. In the instant case, the accident took place in the year 2003 and therefore, the law laid down in Asha Rani Case (cited supra) cannot be applied. Therefore, the Tribunal was right in holding that the Insurance company should pay the compensation amount in the first instance to the claimant and then recover the same from the owner of the vehicle.

8. As far as the quantum of compensation is concerned, it is seen from the records that the claimant had sustained a fracture of " metacarpal left hand" . Dr.K.Sankar (PW2) in his disability certificate (Ex.A6) had contended that the claimant has " cerebral contusion" , which may continue through out of his life and therefore, assessed the disability as 20%. Dr.Thiruvengadam (PW3) had also issued a partial permanent disability certificate (Ex.A9) stating that the claimant had partial permanent disability of 10% on the ground that there is a malunion of " metacarpal bone" on the left hand.

9. The contention of the claimant is that, he was a driver by profession and was also engaged in the business of selling plantain leaves. However, the claimant has not adduced any evidence to show that he was a driver by profession. Ex.A7, photostat copy of the driving licence shows that the claimant had a licence to drive only light motor vehicle. Merely based on the Ex.A7, it cannot be concluded that the claimant was a driver by profession. Since there is no functional disability, multiplier method adopted by the Tribunal is totally erroneous. As per the disability certificates issued by the Doctors PW2 and PW3, disability of the claimant is taken up as 30% for calculating loss of earning capacity of the claimant. Since the accident took place in the year 2003, Rs.1000/- per percentage is awarded. Thus, Rs.30,000/- is awarded towards " loss of earning capacity". The claimant has filed medical bills to show that he had actually incurred a sum of Rs.20,978/- towards medical treatment. Therefore, a sum of Rs.20,978/- is awarded towards " medical bills". The tribunal had fixed the monthly income of the claimant as Rs.6,000/- per month. However, the claimant has not filed any document to prove the same. Therefore, in the absence of proof of income, notional income of the claimant is fixed at Rs.3,500/- per month. On account of the accident, the claimant would not have been in a position to attend to his work atleast for six months. Therefore, (3,500x6) Rs.21,000/- is awarded towards " loss of income'. The various heads under which the claimant is entitled to compensation is extracted hereunder.

Sl. No.	Heads	Amount
1.	Loss of earning capacity	30,000
2.	Medical bills	20,978
3.	Pain and sufferings	15,000
4.	Extra nourishment	5,000
5.	Transportation	5,000
6.	Attender's charges	3,000
7.	Damage to clothes	1,000
8.	Loss of income	21,000
	Total	1,00,978

This amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is scaled down from Rs.3,47,175/- to Rs.1,00,978/-

(iii) The appellant, Insurance company is directed to deposit the entire compensation awarded by this court i.e., Rs.1,00,978/- (less the amount already deposited by them) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order. The insurance company is at liberty to withdraw the amount deposited by them over and above the compensation awarded by this court.

(iv) On such deposit being made by the Insurance Company, the first respondent / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
   Motor Accident Claims Tribunal
   Dharmapuri.

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

+1cc to Mr.S.Arunkumar, Advocate Sr.79248

C.M.A.No.1568 of 2009

mr[co]
srg 27/01/2020