

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.No.1805 of 2010

Kamali @ Kamalammal

...Appellant / Petitioner

..Vs..

1. G.Muniraj

2. The Oriental Insurance Company Ltd.,
(D.O. 10 Chennai)
Dwaraka, 2nd floor,
No.79, Uttamar Gandhi Salai,
Chennai - 600 034.

3. Nicholas

4. The National Insurance Company Ltd.,
No.371 A, Prestige Shopping Arcade,
3rd Floor, Ramasamy Circle,
Mysore, Karnataka State,
Pin 570 024.

...Respondents / Respondents

(1st Respondent was set exparte
Hence notice in the CMA may be
dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 01.04.2009, in M.C.O.P.No.163 of 2007, on the file of the Motor Accident Claims Tribunal/Additional District Judge, FTC No.1, Erode.

For Appellant : Mr.R.Shase
for Mr.R.Marudhachalamurthy

For Respondents: Mr.J.Chandran for R2
No appearance for R3

Mrs.N.B.Surekha for R5

R1-Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.163 of 2007, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Tract Court No.1, Erode. She filed the above said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.2,00,000/- for the injuries sustained by her in a road accident that took place on 11.01.2007, when she was travelling in a bus bearing Registration No. TN 33 X 7779.

2. According to the claimant, on 11.01.2007, at about 02.30 pm, a speeding van bearing Registration No. KA 10836, belonging to the third respondent and insured with the fourth respondent hit the bus bearing Registration No. TN 33 X 7779, as a result of which, she sustained injuries all over her body and that she was immediately rushed to the Government Hospital at Erode and took treatment as an inpatient from 12.01.2007 to 23.01.2007 and thereafter, took treatment on Sakthi Nursing home. It is further contended by her that the rash and negligent driving of the drivers of the bus bearing Registration No. TN 33 X 7779 and the van bearing Registration No. KA 10836 are responsible for the accident and that since the said vehicles are insured with Oriental Insurance company Limited, Chennai and National Insurance company Limited, Karnataka State respectively, they are jointly and severally liable to pay compensation to her.

3. The first respondent remained absent before the tribunal and therefore, he was set ex-parte. All the other respondents contested the claim petition. The learned Additional District Judge, Fast Tract Court No.1, Erode after analysing the evidence on record, while awarding compensation of Rs.70,000/- to the appellant/claimant fixed the negligence on the part of the drivers of both the bus and the van in the ratio 50:50 and further held that since the van bearing Registration No. KA 10836 was plied without any valid permit, the fourth respondent was exonerated from paying the compensation amount.

4. Aggrieved over the orders passed by the tribunal, the appellant/claimant has filed the present appeal.

5. Mr. R. Shase, learned counsel appearing for the appellant relied on the decision in Khenyei vs. New India Assurance Company Limited reported in (2015) 9 SCC 273 and contended that when there is no valid permit to ply the vehicle, the tribunal should have directed the fourth respondent Insurance Company to pay the compensation amount in the first instance, and then recover the same from the owner of the vehicle and that in the instant case, the tribunal has wrongly exonerated the Insurance Company from paying the compensation amount to the appellant/claimant.

6.A perusal of the records shows that the van bearing Registration No. KA 10836 did not have valid permit on the date of the accident and therefore, there is a violation of policy conditions. Section 66 of the Motor Vehicles Act, 1988 is extracted hereunder to the extent necessary for the disposal of the present appeal:

"(1)No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used"

The Hon'ble Supreme Court in Khenyei vs. New India Assurance Company Limited reported in (2015) 9 SCC 273 (cited supra), has clearly laid down that when there is no permit, the Insurance Company should be directed to pay the compensation amount to the claimant in the first instance and then recover the same from the third respondent.

7.The learned counsel for the appellant/claimant would contend that though the appellant/claimant has been permanently disabled from moving her right arm, the tribunal has awarded a very meagre amount of Rs.70,000/- towards compensation. She would further contend that no amount was awarded towards loss of amenities.

8. Per contra, learned counsel appearing for the second respondent would contend that the tribunal has awarded a just compensation taking into consideration the legal principles which were in vogue at the point of time when the orders were passed by the tribunal and therefore, the orders need not be disturbed at this juncture.

9.In the instant case, Dr.Sakthivel (P.W.2) has assessed the partial permanent disability as 25%. A perusal of the wound certificate (Ex.P2) also shows that the appellant/claimant has sustained the following injuries:

"Swelling and deforming of right arm,
fracture of right Humerus.

Swelling and deforming right elbow and
forearm"

10. It is contended by the learned counsel appearing for the appellant that the appellant/claimant is a labourer and she is unable to do any work on account of the injuries sustained by her in the accident. Since there is no functional disability, I do not see any reason to adopt multiplier method and therefore I hold that awarding a sum of Rs.2000/- per percentage towards partial permanent disability would meet the ends of Justice. Therefore a sum of Rs.50,000/- (25% x Rs.2,000) is awarded towards partial permanent disability. Apart from that, the appellant/claimant is entitled to a sum of Rs.5,000/-, Rs.5,000/-, Rs.5,000/-, Rs.2,000/-, Rs.1,000/- towards extra nourishment, transportation charges, loss of amenities, attender's charges and damages to clothes.

11. The notional income of the appellant/claimant is taken as Rs.3,000/- since no proof of income is adduced by the claimant. As the appellant/claimant is a labourer, she would not have been in a position to attend to her work at least for six months and therefore, the loss of income for six months is calculated as Rs.18,000/- (Rs.3,000/- x 6). Thus, the amount awarded under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.50,000/-
2.	Pain and sufferings	Rs.20,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.5,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damages to clothes	Rs.1,000/-
7.	Loss of amenities	Rs.5,000/-
8.	Loss of income	Rs.18,000/-
9.	Medical expenses	Rs.18,600/-
Total		Rs.1,24,600/-

Thus the appellant/claimant is entitled to a sum of Rs.1,24,600/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

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

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.70,000/- to Rs.1,24,600/- together with interest at the rate of 7.5% per annum.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv) The second and fourth respondents are directed to pay the enhanced compensation in the ratio 50:50 (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 to the credit of M.C.O.P.No.163 of 2007, dated 01.04.2009, on the file of the Motor Accident Claims Tribunal, Additional District Judge, FTC No.1, Erode within a period of four weeks from the date of receipt of a copy of this order.

(v) The fourth respondent after paying their share of compensation to the appellant/claimant, can recover the same from the third respondent/owner of the van bearing Registration No. KA 10836, in the same proceedings.

(vi) On such deposit being made by the respondents, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

mbi

To

1) The Additional District Judge,
Fast Tract Court No.1,
The Motor Accidents Claims Tribunal,
Erode.

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

+1 cc to Mr.M.Guruprasad, Advocate, S.R.No.5702

+1 cc to Mr.J.Chandran, Advocate, S.R.No.5575

+1 cc to Mr.N.B.Surekha, Advocate, S.R.No.5125

C.M.A.No.1805 of 2010

KK(CO)
SSM(03/04/2019).