IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.03.2019

Judgment Pronounced on : 01.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2171 of 2010

Branch Manager,
National Insurance Co.Ltd.,
Branch Office,
81-D, Chetty Street,
Thiruchengodu, Namakkal District.
... Appellant/3rd Respondent

Versus

1.Rajareddy @ Rajappa ...1st Respondent/Claimant
2.V.Gowra Reddy
3.M.Sudappa
R2 and R3-Exparte before Tribunal
... 2nd and 3rd Respondents/Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.08.2007 made in MCOP.No.139 of 2005 on the file of the Motor Vehicle Claims Tribunal, Sub Court, Hosur.

For Appellants : Mr.S.Arunkumar

For Respondent : Mr.Mukund R.Pandiyan (for R1)

JUDGMENT

The Insurance Company is the appellant herein, challenging the award on the point of liability and quantum as well.

2.The case of the claimant/first respondent herein is that on 13.09.2003 at 3.30 p.m., when he was walking on the left side of the road in Bagalur to Hosur Main Road, near the brick factory at Kaleswaram, the driver of the Tractor (2nd respondent herein) bearing Registration No.TN-45-H-1584, while turning the vehicle towards right side and on seeing the claimant walking on the side of the road, suddenly applied the brake and in the process, the connection between the Tractor & the Trailer snapped and Trailer hit against the claimant and then capsized on the right side of the road. Due to the impact, the claimant sustained injuries. The second respondent is the owner of the vehicle and the appellant is the insurer of the said vehicle. Hence, they are jointly liable to pay compensation to the claimant. He filed claim petition in MCOP.No.139 of 2005, claiming a sum of Rs.9,05,300/-, which was restricted to Rs.4,00,000/-.

2.Before the Tribunal, the claimant himself was examined as PW.1 and one Dr.T.V.Gandhi, was examined as PW.2. There are nine documents were marked as Ex.P1 to P9. On the side respondents, one D.Manivel was examined as RW.1 but no document was marked.

3.The Insurance company filed a counter statement before the Tribunal denying that the claimant was involved in the said accident as a person walking on the road, rather was travelling in the Tractor along with five others, on the date of the accident. Furthermore, they vehemently oppose that the five persons are not farmers and they are not travelled for agricultural purposes. While filing the complaint, the claimant stated in the FIR, there are seven persons travelled in the said vehicle on the date of the accident. More particularly, as per the endorsement in the RC book of the Tractor, being a goods vehicle and the seating capacity is only one. It is a violation of policy condition. Therefore, the Insurance company denied all the averments and details furnished in the claim petition by the claimant. Hence, they prayed for dismissal of the claim petition.

4.On considering both the oral and documentary evidence, the Tribunal accepted the case of the claimant by holding that he was walking on the road, at the time of accident and due to the rash and negligent driving of the driver of the first respondent's vehicle, it dashed against the claimant and he sustained injuries. Accordingly, the Tribunal held that the claimant suffered functional disability and adopted the multiplier method and awarded a sum of Rs.2,11,000/-. Aggrieved against the same, the appellant/Insurance company has come up with the present appeal.

5.The learned counsel appearing for the appellant/Insurance company submitted that the Tribunal had failed to note that the third respondent/owner of the vehicle, has violated the policy conditions by permitting passenger to be carried in a Tractor. There is no evidence to prove the claimant was walking on the road at the time of accident and without any additional premium being paid by the second respondent, the Tribunal ought to have exonerated them from the liability. Further, he contended that the version of PW.1 is baseless, which is reflected in the FIR statement given to the police under Ex.P1. In the absence of positive evidence, the adoption of multiplier method is not warranted. Hence, he seeks to set aside the award.

6.I have heard the learned counsel appearing for the respective parties and perused the materials available on record.

7.After going through both the oral and documentary evidence, it is seen from the evidence of PW.1, without knowing the contentions made in the complaint, he has just signed at semi conscious state. During the cross-examination, the appellant/Insurance company failed to prove the contentions made in the FIR/Ex.P1. Hence, the Tribunal has come to the conclusion that the accident taken place due to the negligence on the part of the driver of the Tractor is hereby confirmed.

8.On a perusal of evidence of PW.2/Dr.T.V.Gandhi, who had assessed the disability of the claimant at 27% and issued Ex.P7/permanent disability certificate based upon Ex.P8/X-ray, out of which, the Tribunal has taken 25% of disability. After going through the evidence and also answer elicited from the PW.2/Doctor, this Court find it hard to accept the finding of the Tribunal that the injuries sustained by the claimant is, of functional disability in nature.

9.Taking note of the fact of the case, this Court is of the considered view that the Tribunal has committed an error in presuming that claimant/first respondent herein suffered functional disability, hence, the adoption of multiplier method is hereby set aside on the ground the claimant has suffered disability only at 25%.

10.However, in the absence of any positive evidence, the Tribunal relying on the evidence of Ex.P2/wound certificate, and concluded that he could not be able to perform his duty as before and taking note of the date of the accident a sum of Rs.25,000/- shall be awarded towards disability at 25% at the rate of Rs.1,000/- per percentage.

11.The claimant has been working as vegetable vendor and he could earn at least a sum of Rs.4,000/- per month as fixed by the Tribunal and the claimant could have taken rest at least four months. However, the Tribunal awarded loss of income for the period of treatment for one year a sum of Rs.1,80,000/-, which is highly excessive. Hence, a sum of Rs.16,000/- (Rs.4,000 x 4) is awarded towards pecuniary loss to the claimant during the period of treatment for four months.

12.Considering the nature of the injuries, a sum of Rs.5,000/- each towards pain and suffering and extra-nourishment is awarded. The Tribunal did not award any amount towards, Transportation, Loss of amenities and Attendant charges, which is arrived at Rs.3,000/- each based upon the period of hospitalization. Accordingly, the compensation award amount of Rs.2,11,000/- awarded by the Tribunal to the claimant is hereby modified and re-calculated as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Disability	Rs.1,80,000/-	Rs.25,000/-
Loss of earning capacity due to period of hospitalization	-	Rs.16,000/-
For pain and suffering	Rs.5,000/-	Rs.5,000/-
Extra-nourishment & Transport charges	Rs.5,000/-	-
Transportation	-	Rs.3,000/-
Extra-nourishment	-	Rs.5,000/-
Medical expenses	Rs.21,000/-	-
Loss of amenities	-	Rs.3,000/-
Attendant charges	-	Rs.3,000/-
Total	Rs.2,11,000/-	Rs.60,000/-

13.In the result,

(i) the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed by reducing the compensation awarded by the Tribunal from Rs.2,11,000/- to Rs.60,000/-.

(ii) the Insurance Company is directed to deposit the amount of Rs.60,000/- together with interest, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment.

(iii) if there is any excess amount deposited, the Insurance company is at liberty to withdraw the same.

(iv) On such deposit being made, the claimant is entitled to withdraw the entire amount as determined in this appeal with accrued interest thereon. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Motor Vehicle Claims Tribunal,
Sub Court, Hosur.

Copy to

The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.Mukund R.Pandiyan, Advocate Sr.54422
+1cc to Mr.S.Arunkumar, Advocate Sr.54608

C.M.A.No.2171 of 2010

mr[co]
srg 16/10/2019