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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.3675 of 2010

Venkatachalam

... Appellant

Versus

1.Maheswari

2.National Insurance Company Limited,
Branch Office-I,
Thanthai Periyar Market Complex,
Post Box No.15, Salem -1.

...Respondents

(1st respondent set exparte before the
Tribunal)

Prayer: Civil Miscellaneous Appeal has been filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 17.06.2009 made in M.C.O.P.No.1016 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court -1, Salem.

For Appellant : Mr.K.Kuppusamy
For Respondents : Mrs.R.Sreevidhya (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 17.06.2009 made in M.C.O.P.No.1016 of 2005 on the file of the Motor Accident Claims Tribunal, Fast Track Court-1, Salem, challenging the quantum of compensation.

2.1.According to the appellant/claimant, on 30.04.2005, at about 7.30 pm, when the claimant was walking on the road, near Shankar theatre towards Kuranguchavadi, the first respondent/driver cum owner of the offending vehicle, bearing Regn.No.TN-57-B-4026, which was insured with the second respondent/Insurance company, drove the Auto in a rash and negligent manner and hit behind the claimant. Due to the impact, the claimant fell down and sustained several injuries all over the body.



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2.2.Immediately, the claimant was admitted in the Government Hospital, Salem. At the time of accident, he was aged 55 years, and was working as a Lorry driver and earning Rs.5,000/- per month. Due to the accidental injuries, he could not perform his duty as before the accident. Therefore, the claimant sought compensation for a sum of Rs.2 lakhs.

3.The learned counsel appearing for the Insurance company would vehemently oppose that the driver-cum-owner did not possess valid and effective driving licence for the offending vehicle bearing Regn.No.TN-57-B-4026, at the time of accident. Hence, the insurance company is not liable to pay the compensation and therefore, he sought dismissal of the claim petition.

4.Before the Tribunal, on the side of the claimant, two witnesses were examined as PW.1 & PW.2 and four documents were marked as Ex.P1 to Ex.P4. On the side of the respondents, six documents were marked as Ex.R1 to R6 and one witness was examined as RW.1.

5.The Tribunal, after analysing the evidence on record both oral and documentary, awarded compensation of Rs.47,000/- and directed the first respondent to deposit the said award amount along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation. The second respondent/Insurance company was exonerated from the liability.

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

7.With regard to the disability, Ex.P3/disability certificate, Ex.P2/wound certificate issued by the Dr.Sreedharan/PW.2, which shows that the disability at 25% was partial permanent disability and the same is hereby confirmed.

8.It is not dispute that due to rash and negligent driving on the part of the driver/the first respondent, the accident had occurred. In the light of the decision rendered in the case of Oriental Insurance Company Limited Vs. Angad Kol & Ors, reported in 2009 (1) TNACC 242 (SC), wherein, held that even there was no valid licence, the insurer was liable to pay the compensation and recover the same from the owner and driver of the vehicle.

9.Hence, as per the above said Judgment, the Tribunal ought to have directed the second respondent to pay the compensation on behalf of the first respondent and recover the same from the first respondent, who has been holding the valid Insurance policy of the second respondent at the time of accident. In this regard, the finding of the Tribunal needs consideration.



10. Accordingly, this Court is inclined to enhance the award under the head of disability at 25% to Rs.37500/- at the rate of Rs.1,500/- per percentage as against of Rs.25,000/- awarded by the Tribunal. Further, the Tribunal awarded towards loss of income a sum of Rs.15,000/- and the same is hereby confirmed. However, this Court feels that the award of the Tribunal is too low and it needs consideration, considering the nature of the injuries sustained by the claimant in the said accident. The Tribunal has awarded under the head of Injuries a sum of Rs.7,000/- and the same is hereby set aside. It is seen that the Tribunal did not award any amount towards pain and suffering, loss of amenities, attendant charges, transportation and extra-nourishment. Therefore, this Court feels to award a sum of Rs.15,000/- towards pain and suffering; a sum of Rs.7,000/- towards loss of amenities, a sum of Rs.8,000/- towards attendant charges, a sum of Rs.7,000/- towards transportation and a sum of Rs.8,000/- towards extra-nourishment have to be awarded as compensation to the claimant to meet the ends of justice. In view of the above findings, the award of the Tribunal is modified and enhanced as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Injuries	Rs.7,000/-	-
Disability	Rs.25,000/-	Rs.37,500/-
Loss of income	Rs.15,000/-	Rs.15,000/-
Pain and suffering	-	Rs.15,000/-
Loss of amenities	-	Rs.7,000/-
Attender charges	-	Rs.8,000/-
Transportation	-	Rs.7,000/-
Extra nourishment	-	Rs.8,000/-
Total	Rs.47,000/-	Rs.97,500/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed.

(i) The compensation amount of Rs.47,000/- awarded by the Tribunal is hereby enhanced to Rs.97,500/-, along with interest at the rate of 7.5% per annum, from the date of petition till the date of realisation.

(ii) This Court directs the Insurance Company to pay and recover the same and shall deposit the compensation amount, as ordered by this Court, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iii) Interest at the rate of 7.5% with regard to the enhancement of amount shall accordingly be calculated for



payment.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount, as determined in this appeal, with accrued interest.

(v) The appellant is directed to pay additional Court fee for the enhanced amount. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Judge
The Motor Accident Claims Tribunal,
Fast Track Court -1, Salem.

Copy to

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

+1 CC to M/s.R. Sreevidya, Advocate sr 34523.

C.M.A.No.3675 of 2010

MG(CO)
SP(29/11/2019)