IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No. 1292 of 2015

R.Kumaresan .. Appellant/Petitioner

Vs.

1.M.Krishnan
2.The Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.28, North Usman Road, 1st Floor,
T.Nagar, Chennai 600 017. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 22.11.2012, made in M.C.O.P.No.132 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Kancheepuram.

For Appellant : Mr.M.Sivakumar
For Respondents: Mr.J.Michael Visuvasam (for R2)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 22.11.2012, made in M.C.O.P.No.132 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Kancheepuram.

2.The appellant/claimant filed M.C.O.P.No.132 of 2009, on the file of the Sub Court, (Motor Accident Claims Tribunal), Kancheepuram, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.08.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the TATA Ace belonging to the 1st respondent and dismissed the claim petition as against the 2nd respondent-Insurance Company. Further, the Tribunal awarded a sum of Rs.15,000/- as compensation to the appellant and directed the 1st respondent, owner of the vehicle to pay the same.

4.Challenging the portion of the award, dismissing the claim petition against the 2nd respondent-Insurance Company from its liability, dated 22.11.2012, made in M.C.O.P.No.132 of 2009 and seeking enhancement of the compensation granted, the appellant has come out with the present appeal.

5.Learned counsel appearing for the appellant contended that the Tribunal erred in not taking into consideration the negligence on the part of the driver of the 1st respondent vehicle and the contract of policy which was in force at the time of accident. R.W.2, RTO had deposed that the driver had valid driving license to drive two wheeler with gear and light motor vehicle and he had no badge to drive the TATA Ace vehicle. For non-possession of badge and driving license, the 1st respondent cannot be disqualified or held not liable for the accident. Non-possession of badge endorsement is only a minor breach of policy condition by the owner of the vehicle. The Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation at the first instance and recover the same from the owner of the vehicle. Due to the accident, the appellant suffered injuries of suture below the left eye and right hand. The compensation awarded by the Tribunal is very meagre and prayed for ordering pay and recovery and for enhancement of the compensation.

6.Heard learned counsel appearing for the appellant as well as the 2nd respondent and perused the materials available on record.

7.From the materials on record, it is seen that the Tribunal dismissed the claim petition against the 2nd respondent on the ground that the driver of the offending vehicle did not possess valid driving license at the time of accident. The Tribunal considering the evidence of R.W.1 and Ex.R2-copy of the license, held that the driver of the offending vehicle did not possess badge to drive commercial vehicle, but the driver possessed driving license only to drive a light motor vehicle. The said reasoning is erroneous. This reasoning is without merits in view of the judgment of the Hon'ble Apex Court reported in 2017 (2) TN MAC 145 (SC) [Mukund Dewangan Vs. Oriental Insurance Co. Ltd.,]. In the said judgment, the Hon'ble Apex Court has held that once a person possess valid driving license to drive a particular category of vehicle, he is entitled to drive all class of vehicles including commercial vehicles in that category and there is no necessity to obtain badge or endorsement. The ratio in the judgment of the Hon'ble Apex Court referred to above is squarely applicable to the facts of the present case. In view of same, the portion of the award dismissing the claim petition against the 2nd respondent is set aside and the 2nd respondent-Insurance Company is directed to pay compensation to the appellant.

8.As far as the quantum of compensation is concerned, the Tribunal having held that the appellant is entitled to compensation as he would have spent sufficient money for extra nourishment, medical expenses, transportation, and suffered lot of pain and suffering due to the injuries, granted only a sum of Rs.15,000/- as lumpsum compensation, which is meager. Hence, the same is enhanced to Rs.40,000/-.

9.In the result, the appeal is allowed and the amount awarded by the Tribunal at Rs.15,000/- is enhanced to Rs.40,000/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No. 132 of 2009. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The 1st respondent, owner of the vehicle is permitted to withdraw the amount, if any deposited by him, to the credit of M.C.O.P. No. 132 of 2009. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gsa
To
1.The Subordinate Judge,
(Motor Accident Claims Tribunal),
Kancheepuram.

2.The Section Officer,
V.R Section,
High Court, Madras.
+1 CC to Mr.J.Michael Visuvasam, Advocate sr 103273.
+1 CC to Mr.C. Prakasam, Advocate sr 103268.

C.M.A.No. 1292 of 2015

SR(CO)
SP(17/09/2020)