IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 22.04.2019	Date of Pronouncing Judgment 31.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2427 of 2012

A.Mohan

...Appellant

Vs.

1.P.Murugaiyan
2.The Oriental Insurance Company Ltd.,
No.8, Esplanade, Chennai – 108.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order made in M.C.O.P.No.1957 of 2006 dated 07.06.2010 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.M.C.Swamy for
M/s.Senthilswamy Associates

For Respondent 2: Mr.A.R.Suresh J.Chandran

For Respondent 1: Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal is filed against the fair and decreetal order made in M.C.O.P.No.1957 of 2006 dated 07.06.2010 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

2. The claimants are the appellants herein. The Factum of accident and on the point of liability and finding on rash and negligent driving on the part of the offending vehicle is not in dispute. Hence, the finding of the Tribunal is hereby confirmed.

3. On the point of quantum, I have heard both sides.

4. Heard both sides. The learned counsel appearing for the

appellant/claimant would contend that due to the road accident that took place on 01.02.2006, the appellant who was working as an Auto driver, sustained fracture on C2 and C6 and sustained fracture in Spinal cord and he is unable to do his work and hence, the Doctor / P.W.3 assessed the disability at 35% and therefore, the disability should have been treated as functional disability and the Tribunal ought to have adopted the multiplier to arrive at compensation.

5. Per contra, the learned counsel for the Insurance Company, would contend that since the driver of the offending vehicle did not possess valid driving license at the time of accident, the Tribunal has rightly adopted the calculation as per the decision rendered by the of Honourable Supreme Court in National Insurance Co. Ltd., Vs. Swaran Singh & Ors., reported in 2004(1) Supreme 243, wherein, it has been categorically held that even though there is a violation of the conditions of the policy, yet the Insurance Company is liable to pay the compensation to the victim and the same could be recovered from the owner of the vehicle. The relevant portion of the Judgment is extracted hereunder:-

> "48. Under the Motor Vehicles Act, holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence. However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof."

As per the above decision, the Tribunal had rightly adopted the pay and recover principle and same warrants no interference.

6. After hearing the both parties on the quantum of compensation and perusing the deposition of the P.W.3 Doctor, who had examined P.W.1 and issued Ex.P2, which is the Discharge Summary issued by Swarnam Nursing Home, it is evident that the appellant had sustained fracture in left side of C2 vertebral body without displacement, fracture body and right lamina C6 vertebra with retropulsion of fragment minimally compromising the spinal canal. It is also evident from Ex.P2 that the appellant was unable to move his neck and also had abrasion over the left knee. It is also evident from Ex.P4, which is a Discharge Summaries issued by Government General Hospital that there is fracture in the spine. The disability certificate

Ex.P13 issued by P.W.3 shows that disability has been fixed at 35%. The tribunal took note of the above fact and awarded Rs.2000/- per percentage of disability and accordingly calculated the compensation for disability at 35 x Rs.2000 = Rs.70,000/- and the same is hereby confirmed.

7. Taking note of the nature of the injuries sustained by the claimant, as evident from the Ex.P4 Discharge Summary and Ex.P13 disability certificate, the loss of income during the period of treatment is calculated at the rate of Rs.4000/- per month for the period of 6 months i.e., Rs.4000 x 6 = Rs.24,000/- and the pecuniary loss sustained by the appellant is re-assessed and enhanced as under.

S.No.	Head	Amount granted (Rs.)
1.	Disability	Rs.70,000/-
2.	Loss of Income	Rs.24,000/-
3.	Transportation Charges	Rs.7,000/-
4.	Nutrition and Extra Nourishment	Rs.10,000/-
5.	Damages	Rs.1,000/-
6.	Medical Expenses as per Ex.P3	Rs.9,000/-
7.	Pain and Sufferings	Rs.30,000/-
8.	Future Medical Expenses	Rs.20,000/-
9.	Attenders Charges	Rs.7000/-
10.	Loss of Amenities	Rs.7000/-
	Total Compensation	Rs.1,85,000/-

8.In the result,

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

(ii) The award amount is enhanced from Rs.1,44,000/- to Rs.1,85,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) As per the above said decision since at the time of the accident driver of the offending vehicle did not possess valid and effective driving license, the second respondent / Insurance Company is directed to pay the amount to the appellant and recover the same from the first respondent. Time for deposit balance of the amount is eight weeks.

(iv) On such deposit, the appellant is permitted to withdraw the amount with accrued interest.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rna

To

The Motor Accidents Claims Tribunal,
The V Court of Small Causes,
Chennai.

+1cc to M/s.Senthilswamy Associates, Advocate sr.38473

C.M.A.No.2427 of 2012

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