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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2555 of 2015

J.Rajababu

... Appellant/Petitioner

Vs.

1.The Chairman
Arunai Engineering College
Mathur Village
Thiruvannamalai District.

2.The United India Insurance Co. Ltd.,
Thiruvannamalai
Thiruvannamalai District.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2015 made in M.C.O.P.No.181 of 2005 on the file of the Motor Accident Claims Tribunal, Arani.

For Appellant : Mr.R.Thirugnanam

For R1 : No appearance

For R2 : Mr.A.Dhiraviyanathan

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 27.01.2015 made in M.C.O.P.No.181 of 2005 on the file of the Motor Accident Claims Tribunal, Arani.

2.The appellant is claimant in M.C.O.P.No.181 of 2005 on the file of the Motor Accident Claims Tribunal, Arani. He filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident



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that took place on 05.08.2005. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and directed the 1st respondent/owner of the bus to pay a sum of Rs.83,000/- as compensation to the appellant and dismissed the claim petition against the 2nd respondent/Insurance Company. The appellant has come out with the present appeal challenging the dismissal of the claim petition against the 2nd respondent/Insurance Company as well as for enhancement of compensation.

3.The learned counsel appearing for the appellant/claimant contended that the Tribunal erred in dismissing the claim petition against the 2nd respondent/Insurance Company and ought to have directed the 2nd respondent also to pay the compensation. Even if the 1st respondent had permit only from 08.08.2005 to 07.08.2010, 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 1st respondent. The accident has occurred in the year 2005. The Tribunal ought to have awarded a sum of Rs.3,000/- per percentage. The amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award passed by the Tribunal dismissing the claim petition against the 2nd respondent/Insurance Company and for enhancement of compensation. In support of his contention, he relied on the following judgment of this Court reported in 2016 (1) 10 TNMAC 117 (National Insurance Company Ltd., vs. J.Thilaga Jackson and others);

"3.The only issue argued in this appeal is that the Tribunal committed error in not directing the Insurance Company to pay the amount of compensation and directing to recover the same from the owner. Learned counsel for the appellant has contended that such order should have been passed by the Tribunal, since there was a violation of policy condition, as the offending vehicle had plied without a valid permit. He brought to my notice paragraph 10 of the judgment passed by the Tribunal. The relevant passage is extracted hereunder:-

"Admittedly the 1st respondent has not produced any indoor investigation report before this Court. However, the 3rd respondent took steps to examine R.W.2 Seetharamara Raja, who is the Motor Vehicle-Inspector at Pondichery. RW2 deposed before this court as the offending vehicle PY 01 N 8350 is a Contract Carriage vehicle and also produced Ex.R4



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the copy of the permit given to the vehicle and also Ex.R5 the copy of the permit register before this Court and further stated that the vehicle was not given any permit to ply in Tamil Nadu where the accident took place. But in his cross-examination, R.W.2 admitted the possibility for plying the vehicle in Tamil Nady after getting special permission."

4.In support of his contention, learned counsel for the appellant relied on a judgment of this Court in Sankar vs. M.Ramasamy, 2008 (6) MLJ 817. In that case, while allowing the appeal filed by the claimant, a learned single Judge of this Court held that since the offending vehicle had plied without a valid permit, the insurance company should pay the award amount to the claimants and then recover the same from the insured and the insurer can straightaway levy execution proceedings, without filing a separate suit."

4.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the 1st respondent did not possess permit to run the bus on the date of accident. The 1st respondent did not produce the permit, even though notice was issued to the 1st respondent, which was acknowledged by the 1st respondent as per Ex.C1. R.W.1 was examined by the 2nd respondent to prove that the 1st respondent did not possess permit at the time of the accident. The 1st respondent obtained permit subsequent to the accident. The total compensation granted by the Tribunal is not meagre and prayed for dismissal of the appeal.

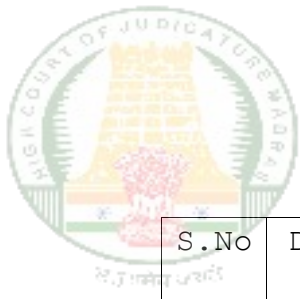
5.Heard the learned counsel appearing for the appellant as well as the 2nd respondent/Insurance Company and perused all the materials available on record.

6.From the materials available on record, it is seen that the contention of the appellant/claimant is that the accident has occurred due to rash and negligent driving by the driver of the bus belonging to the 1st respondent. On the other hand, the 2nd respondent/Insurance Company contended that the accident has occurred only due to negligence on the part of the appellant, who suddenly crossed the road. The appellant proved his contention by examining P.W.1 and marked F.I.R., which was registered against the driver of the bus belonging to the 1st respondent. The 1st respondent remained exparte before the Tribunal and the 2nd respondent did not let in any evidence to prove that the accident has occurred only due to negligence on



the part of the appellant. In such circumstances, the Tribunal held that the accident occurred only due to rash and negligent driving by the driver of the bus belonging to the 1st respondent and dismissed the claim petition against the 2nd respondent on the ground that the 1st respondent did not possess the permit to run the bus on the date of accident. The Tribunal has come to the said conclusion on the ground that even after notice was issued to the 1st respondent, the 1st respondent did not produce the permit. The Tribunal failed to note that the alleged letter written to the 1st respondent was not marked by the 2nd respondent. The Tribunal based on the postal acknowledgment marked as Ex.C1 erroneously held that the notice was issued to the 1st respondent to produce the permit, when the 2nd respondent did not produce the said letter. R.W.1 based on the inspection report deposed that the 1st respondent did not possess permit on the date of accident. From the award of the Tribunal, it is seen that R.W.1 did not produce the entire report of the investigator and enclosures attached to the report were removed and filed. The 2nd respondent has not examined the investigator. The investigator's report marked as Ex.R1 was not authenticated. The 2nd respondent has not taken summons to the concerned R.T.O. to produce the permit, even though the 2nd respondent contended that the permit was issued to the 1st respondent subsequent to the date of accident, no such permit was summoned from the R.T.O. and marked. The Tribunal without appreciating the above facts erroneously held that on the date of accident, no permit was issued to the 1st respondent. In view of the same, portion of the award passed by the Tribunal dismissing the claim petition against the 2nd respondent/Insurance Company is set aside. The 2nd respondent is liable to pay compensation to the appellant. In any event, even if the 1st respondent did not possess a permit on the date of accident, as per the judgment relied on by the learned counsel for appellant, the 2nd respondent is liable to pay compensation at the first instance and recover the same from the 1st respondent and the 2nd respondent cannot be exonerated for 1st respondent not possessing a permit.

7.As far as quantum of compensation is concerned, the appellant has contended that the Tribunal ought to have awarded compensation at the rate of Rs.3,000/- per percentage. The said contention is not acceptable. The accident is of the year 2005. A sum of Rs.2,000/- per percentage awarded by the Tribunal is in order. The appellant has taken treatment in the hospital as in-patient on 05.08.2005 and 06.08.2005 for two days. The Tribunal has not awarded any amount towards attendant charges, extra nourishment and loss of amenities and this Court awards a sum of Rs.2,000/-, Rs.2,000/- and Rs.5,000/- under those heads respectively. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	70,000	70,000	Confirmed
2.	Mental agony	10,000	10,000	Confirmed
3.	Transportation	2,000	2,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Attendant charges	-	2,000	Granted
6.	Extra nourishment	-	2,000	Granted
7.	Loss of amenities	-	5,000	Granted
	Total	Rs.83,000/-	Rs.92,000/-	Enhanced by Rs.9,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.83,000/- is hereby enhanced to Rs.92,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the entire 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar



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To

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The Judge,
Motor Accidents Claims Tribunal,
Arani.

Copy to

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

+1cc to Mr.R.Thirugnanam, Advocate Sr.42285
+1cc to Mr.A.Dhiraviyanathan, Advocate Sr.43019

C.M.A.No.2555 of 2015

pm[co]
srg 23/10/2019