IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1306 of 2018

Aasirpatham .. Appellant/Petitioner

Vs.

1.Jabarulla

2.The Manager,
New India Assurance Co. Ltd.,
Jubitor Thiyatru Opp.,
K.R.A. Building, No.85, Market Road,
Tanjore.
Presently at,
New India Assurance Co. Ltd.,
No.45, Moore Street,
5th Floor, Chennai 600 001. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 30.07.2014, made in M.C.O.P.No.92 of 2012, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Ariyalur.

For Appellant : Mr.A.A.Venkatesan

For R2 : Mrs.G.Sukumari
for M/s.R.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 30.07.2014, made in M.C.O.P.No.92 of 2012, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Ariyalur.

2.The appellant/claimant filed M.C.O.P.No.92 of 2012, on the file of the Principal District Court, (Motor Accident Claims Tribunal), Ariyalur, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 31.12.2011.

3.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 TATA Ace belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.2,05,600/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent-Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent and for enhancement of the compensation granted by the Tribunal in the award dated 30.07.2014 made in M.C.O.P.No.92 of 2012 and, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that due to the accident, the appellant suffered fracture in his right knee and there was a mal-union of bone and communited supracondylar fracture femur with IC extension. He took treatment as in-patient in Hospital for a period of 15 days and surgery has been done. To prove the same, he has filed Ex.P5-discharge summary. The Tribunal without considering the same, has granted a meagre sum towards disability. The Tribunal erred in directing the 1st respondent to pay the compensation and ought to have ordered pay and recovery to the 2nd respondent-Insurance Company, considering the validity of the policy which was in force from 01.02.2011 to 31.01.2012, while the accident occurred on 31.12.2011. In any event, the total compensation granted by the Tribunal is meagre and prayed for enhancement of the same.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal considering the fact that the driver of the TATA Ace vehicle belonging to the 1st respondent did not possess valid driving license at the time of accident, which is an violation of policy condition, rightly directed the 1st respondent to pay the compensation. The same is not erroneous. The amounts granted by the Tribunal are not meagre and prayed to confirm the award granted by the Tribunal and for dismissal of the appeal.

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

8.The present appeal is filed against the portion of the award dismissing the claim petition against the 2nd respondent-Insurance Company. From the materials available on record, it is seen that the Tribunal has exonerated the 2nd respondent from its liability only on the ground that the driver of the offending vehicle was not possessing valid driving license. It is well settled that even if the driver of the offending vehicle does not possess valid driving licence at the time of accident, the Insurance Company must satisfy the award amount and recover the same from the owner of the vehicle. In the judgment reported in 2004 ACJ 1 SC [National Insurance Co. Ltd., Vs. Swaran Singh and others], the Hon'ble Apex Court has held that if the driver of the vehicle did not possess valid driving licence at the time of accident, the Insurance Company can be directed to pay the amount to the claimant and then realise it from the owner of the offending vehicle. In the judgment reported in 2012 1 TN MAC 226 [ICICI Lombard General Insurance Co. Ltd., Vs. Annakkili], it has been held that the Insurance Company cannot be exonerated from the liability to pay the compensation to the 3rd party claim for the reason that the driver had no licence or badge and after paying the amount to claimants, recover the same from the owner of the vehicle. The similar finding has been reiterated in another judgment reported in 2012 1 TN MAC 536 [National Insurance Co. Ltd., Vs. T.Mathiazhagan].

9.By applying the said principle of law to the present case, the portion of the award exonerating the 2nd respondent-Insurance Company, on the ground that the driver of the vehicle belonging to the 1st respondent did not possess valid driving licence at the time of accident, is set aside and the 2nd respondent-Insurance Company is directed to pay the compensation to the appellant/claimant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

10.As far as the quantum of compensation is concerned, P.W.2-Doctor assessed that the appellant suffered 37% disability. The Tribunal granted a meagre sum towards disability. The accident is of the year 2011. The appellant is entitled to a sum of Rs.1,11,000/- towards disability at the rate of Rs.3,000/- per percentage for 37% disability. The appellant has taken treatment as in-patient in the hospital for a period of 15 days. The Tribunal failed to grant any amount towards damages to cloth and attender charges. Hence, a sum of Rs.10,000/- is granted towards attender charges and a sum of Rs.2,000/- is granted towards damages to cloth. The amounts granted by the Tribunal under other heads are just and reasonable and hence, they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	37,000/-	1,11,000/-	Enhanced
2.	Pain and suffering	25,000/-	25,000/-	Confirmed
3.	Loss of income	9,000/-	9,000/-	Confirmed
4.	Transportation	4,000/-	4,000/-	Confirmed
5.	Medical expenses	1,30,600/-	1,30,600/-	Confirmed
6.	Damages to cloth	-	2,000/-	Granted
7.	Attender charges	-	10,000/-	Granted
	Total	2,05,600/-	2,91,600/-	Enhanced by Rs.86,000/-

11.In the result, the appeal is allowed and compensation granted by the Tribunal at Rs.2,05,600/- is enhanced to Rs.2,91,600/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount along with interest and costs, less the amount already deposited, if any, 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.92 of 2012 at the first instance and recover the same from the 1st respondent, owner of the vehicle. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary applications before the Tribunal. The appellant is directed to pay the necessary Court fee, if any for the amount now enhanced by this Court. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Gsa

To

1.The Principal District Judge,
(Motor Accident Claims Tribunal),
Ariyalur.

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

+1cc to Mr.A.A.Venkatesan, Advocate, S.R.No. 42124
+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 42102

C.M.A.No.1306 of 2018

KJ(CO)
GN(14/08/2020)