IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1903 of 2017

M.Udayakumar .. Appellant/ Petitioner

Vs.

1.S.Mohan

2.M/s. Reliance General Insurance Co. Ltd.,
Plot No.2054, 2nd Avenue
II floor, Annanagar,
Chennai-600 040. .. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 17.11.2016 made in M.C.O.P.No.393 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

For Appellant : Mr.G.G.Pillai
For R2 : Mr.S.Arunkumar

J U D G M E N T

The Civil Miscellaneous Appeal is filed challenging the portion of the award exonerating 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 17.11.2016 made in M.C.O.P.No.393 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai.

2.The appellant is claimant in M.C.O.P.No.393 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai. He filed the said claim petition claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.06.2009.

3.According to the appellant, on the date of accident i.e., on 11.06.2009 at 11.00 a.m., while the appellant was travelling in the motorcycle from North to South in Thiruvallur – Sriperumpudur road, Eicher lorry belonging to the 1st respondent, which came in the same direction, driven by its driver in a rash and negligent manner, hit from behind the motorcycle and knocked down the appellant. In the accident, the appellant sustained grievous injuries all over his body and therefore, he filed the above claim petition claiming compensation.

4.The 1st respondent, owner of the Eicher lorry, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the rider of the motorcycle did not possess valid driving license at the time of accident. The claim petition is bad for non-joinder of owner and insurer of the motorcycle. The 1st respondent did not have valid permit and fitness certificate for the offending vehicle and he has violated the policy conditions. The appellant has to prove the validity of insurance policy. Therefore, the 2nd respondent is not liable to pay any compensation to the appellant.

6.Before the Tribunal, the appellant examined himself as P.W.1 and one Dr.K.J.Mathizhagan was examined as P.W.2 and marked twelve documents as Exs.P1 to P12. On the side of the respondents, no oral and documentary evidence was let in.

7.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 Eicher lorry belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.82,000/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company as the appellant failed to prove the existence of valid insurance policy.

8.Challenging the portion of the award exonerating the 2nd respondent/Insurance Company as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant/claimant contended that the 2nd respondent/Insurance Company has admitted that the offending vehicle was insured with them and the 1st respondent has violated the policy conditions. Therefore, the Tribunal ought to have directed the Insurance Company to pay the compensation. He further contended that the appellant has sustained fracture on proximal left 3rd femur and underwent surgery. He had interlocking nailing on his left thigh. Due to swelling and infection during post operation period, the appellant has suffered more pain and suffering. The Tribunal ought to have awarded more compensation towards pain and suffering. Initially, the appellant was treated by one Dr.Saichandran, who died suddenly and he was re-examined by P.W.2/Dr.Mathiazhagan, who assessed the disability of the appellant as 45%. The Tribunal without considering the same, reduced the same to 5%. He further contended that the appellant was working as a mason and was earning a sum of Rs.8,000/- per month. The Tribunal has fixed only a sum of Rs.6,500/- as monthly income of the appellant, which is meagre. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the appellant has not produced insurance policy of the offending vehicle and therefore, the Tribunal has rightly exonerated the 2nd respondent/Insurance Company from its liability. He further contended that the appellant has not produced any sufficient document with regard to his income. Therefore, a sum of Rs.6,500/- fixed by the Tribunal as monthly income of the appellant is not meagre. The Tribunal has reduced the percentage of disability assessed by P.W.2/Doctor from 45% to 5% on the ground that he has not filed any working sheet and guidelines. The Tribunal after considering the materials available on record, has awarded just compensation. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

12.From the materials available on record, it is seen that the manner of the accident is not disputed. The only contention of the learned counsel appearing for the 2nd respondent/Insurance Company is that the appellant has not produced the Registration Certificate and copy of the insurance policy of the offending lorry in order to verify the owner of the offending vehicle on the date of accident. The 2nd respondent/Insurance Company in the counter statement filed before the Tribunal, has not specifically denied that the offending vehicle was not insured with them. It is the contention of the 2nd respondent that the appellant must prove the validity of insurance policy. The 2nd respondent/Insurance Company except stating that the rider of the motorcycle did not possess driving license and the offending vehicle had no valid fitness certificate at the time of accident, has not let in any oral and documentary evidence before the Tribunal. It is well settled law that for not possessing driving license by the rider of the vehicle and for not producing insurance policy, the claimant who is a third party should not suffer and they must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the order of the Tribunal exonerating the 2nd respondent/Insurance Company from its liability is liable to be set aside and it is hereby set aside. The 2nd respondent/Insurance Company is directed to pay the compensation to the appellant.

13.As far as quantum of compensation is concerned, it is the contention of the appellant that he sustained fracture of proximal 3rd femur (left) and due to the fracture, his left leg knee movement was restricted. To prove the same, the appellant has marked Exs.P3, P5 to P9/wound certificate, x-rays, discharge summary, medical bills and disability certificate and examined P.W.2/Dr.Mathiazhagan, who has assessed the disability of the appellant as 45%. The Tribunal has reduced the percentage of disability assessed by P.W.2/Doctor from 45% to 5% holding that P.W.2/Doctor has not filed any working sheet and guidelines. The reason assigned by the Tribunal for reducing the percentage of disability is not correct. Considering the nature of injuries sustained by the appellant, he is entitled to compensation for 45% disability at the rate of Rs.3,000/- per percentage of disability. Therefore, a sum of Rs.1,35,000/- (Rs.3,000/- X 45%) is awarded towards disability. According to the appellant, he was working as a mason and was earning a sum of Rs.8,000/- per month. The appellant has not filed any document to substantiate the said contention. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal has fixed a sum of Rs.6,500/- as monthly income of the appellant and awarded a sum of Rs.19,500/- (Rs.6,500/- X 3) towards loss of income for a period of three months. The accident is of the year 2009 and the monthly income fixed by the Tribunal is not meagre. Due to the injuries, the appellant would not have attended his work atleast for a period of six months. Therefore, the appellant is entitled to a sum of Rs.39,000/- (Rs.6,500/- X 6) towards loss of income for a period of six months. The appellant has taken treatment as in-patient in the hospital from 11.06.2009 to 20.07.2009 and underwent surgery for his fracture on 14.07.2009. He was treated with interlocking nailing. The Tribunal has awarded a sum of Rs.20,000/-, Rs.10,000/- and Rs.16,000/- towards pain & suffering, transportation & extra nourishment and attendant charges respectively. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.30,000/-, Rs.10,000/-, Rs.30,000/- and Rs.20,000/- are awarded towards pain & suffering, transportation, extra nourishment and attendant charges respectively. The Tribunal has not awarded any amount towards future medical expenses. Considering the fact that the appellant had interlocking of nails on his left femur, a sum of Rs.10,000/- is awarded towards future medical expenses. The amount awarded by the Tribunal towards medical expenses is just and reasonable and hence, the same is 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 or reduced
1.	Pain and suffering	20,000	30,000	Enhanced
2.	Transportation and extra nourishment	10,000	10,000 30,000	Enhanced
3.	Loss of income	19,500	39,000	Enhanced
4.	Disability	15,000	1,35,000	Enhanced
5.	Attendant charges	16,000	20,000	Enhanced
6.	Medical expenses	1,469	1,469	Confirmed
7.	Future Medical expenses	-	10,000	Granted
	Total	81,969 rounded off to 82,000	2,75,469	Enhanced by Rs.1,93,469 /-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.82,000/- is hereby enhanced to Rs.2,75,469/- 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 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. 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. The 1st respondent/owner of the lorry is permitted to withdraw the amount lying in the deposit to the credit of M.C.O.P.No.393 of 2013 on the file of Motor Accident Claims Tribunal, Small Causes Court No.VI, Chennai, if the entire award amount has already been deposited by him. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The VI Judge
The Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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

+1cc to Mr.G.G.Pilai , Advocate SR.No. 106184

C.M.A.No.1903 of 2017

A.SK(02/09/2020)