IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.266 of 2017

K.Babu .. Appellant/Petitioner

Vs.

1.M.Rajendran
2.Reliance General Insurance Co, Ltd.,
Heavipree, Unit No.1, III Floor,
23, Spur Tank Road, Chetpet,
Chennai - 600 031. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2016 made in M.C.O.P.No.407 of 2012 on the file of Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

For Appellant : Mr.Mira Aurobindo cumar for Mr.A.N.Viswanathan Rao

For R2 : Mr.E.Rajadurai for M/s.M.B.Gopalan Associates

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 26.04.2016 made in M.C.O.P.No.407 of 2012, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.407 of 2012, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.03.2009.

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 mini lorry belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.1,76,000/- as compensation to the appellant and dismissed the claim petition as against the second respondent.

4.Challenging the portion of the award dismissing the claim petition against the second respondent-Insurance Company and for enhancement of compensation, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the 2nd respondent-Insurance company did not plead and prove that offending vehicle belonging to 1st respondent was not insured with them at the time of accident. The Tribunal failed to take into consideration the xerox copy of the insurance policy on record and erroneously dismissed the claim petition against the Insurance company. The Tribunal has dismissed the claim petition against the Insurance Company on the ground that the appellant has not mentioned the policy number and has not taken any steps to amend the claim petition to include the policy number. The reasons given by the Tribunal are not valid for dismissing the claim petition against the Insurance Company. The appellant has examined P.W.3-Doctor and marked Ex.P13-disability certificate to show that appellant suffered 50% disability. The Tribunal erroneously reduced the percentage of disability to 25% on the ground that assessment of disability by P.W.3-Doctor is on higher side and prayed for setting aside the award dismissing the claim petition against the second respondent-Insurance Company and for enhancement of compensation.

6.Per contra, Mr.E.Rajadurai, learned counsel appearing for the 2nd respondent contended that the appellant has not proved that vehicle was insured with the 2nd respondent at the time of accident. The Tribunal considering the same, rightly dismissed the claim petition against the second respondent-Insurance company and in any event the amounts awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that the appellant has filed xerox copy of the policy on record. The Tribunal took note of the xerox copy of the insurance policy and did not accept the same on the ground that the same was not brought on record as document. The appellant has filed xerox copy of the policy as an additional document. Considering the insurance policy issued by the 2nd respondent/Insurance Company which was in force at the time of accident, the award of the Tribunal dismissing the claim petition against the 2nd respondent-Insurance company is liable to set aside and is hereby set aside. The 2nd respondent-Insurance company is directed to pay compensation to the appellant as insurer of the

Tata Ace mini lorry, belonging to the 1st respondent.

9.As far as the quantum of compensation is concerned, P.W.3/Doctor assessed that the appellant suffered 50% disability and the Tribunal reduced the same to 25% on the ground that assessment of disability by P.W.3/Doctor is on higher side. The reason given by the Tribunal for reducing the percentage of disability is not correct. The appellant is entitled to compensation towards 50% disability at the rate of Rs.3,000/- per percentage of the disability. The compensation awarded by the Tribunal towards disability is modified to Rs.1,50,000/- [Rs.3,000/- X 50]. From the award of the Tribunal, it is seen that the appellant has taken treatment in the hospital as in-patient for 5 days and the Tribunal has granted a meager sum of Rs.1,250/- towards attendant charges and hence, the same is hereby enhanced to Rs.5,000/-. The compensation awarded by the Tribunal under other heads are 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.	Transportation and Extra nourishment	10,000/-	10,000/-	confirmed
2.	Attendant charges	1,250/-	5,000/-	enhanced
3.	Medical bills	350/-	350/-	confirmed
4.	Disability	75,000/-	1,50,000/-	enhanced
5.	Loss of earning	19,500/-	19,500/-	confirmed
6.	Pain and sufferings	35,000/-	35,000/-	confirmed
7.	Loss of Amenities	35,000/-	35,000/-	confirmed
	Total	Rs.1,76,100/- rounded off to Rs.1,76,000/-	Rs.2,54,850/- rounded off to Rs.2,54,800/-	enhanced by Rs.78,800/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,76,000/- is hereby enhanced to Rs.2,54,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, together 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 is permitted to withdraw the enhanced award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The first respondent is permitted to withdraw the award amount, if any deposited to the credit of M.C.O.P.No.407 of 2012, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. The appellant is directed to pay the Court fee, if any for the enhanced award amount now determined by this Court. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

krk

To

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

Copy To : The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.A.N.Viswanathan Rao, Advocate SR.No.40383

+1cc to M/s.M.B.Gopalan Associates, Advocate SR.No.41467

C.M.A.No.266 of 2017

GP(CO)
GMY(14/10/2019)