IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.3716 of 2010 & 2570 of 2012
and
M.P.No.1 of 2010

C.M.A.No.3716 of 2010:

Bajaj Allianz General Insurance Company Limited,
M.T.P.C. Office, No.25/26,
Prince Towers, IV Floor,
College Road, Nungambakkam,
Chennai. .. Appellant/2nd Respondent

Vs.

1.Babu @ Chandrababu .. 1st Respondent/Petitioner

2.D.Mohan .. 2nd Respondent/1st Respondent

C.M.A.No.2570 of 2012:

Babu @ Chandrababu .. Appellant/Petitioner

Vs.

1.D.Mohan .. 1st Respondent/1st Respondent

2.Bajaj Allianz General Insurance Company Limited,
M.T.P.C. Office, No.25/26,
Prince Towers, IV Floor,
College Road, Nungambakkam,
Chennai. .. 2nd Respondent/2nd Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.02.2010 made in M.C.O.P.No.652 of 2005 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri.

C.M.A.No.3716 of 2010:

For Appellant : Mr.S.Arunkumar

For R1 : Mr.F.Terry Chella Raja
for Ms.M.Malar

C.M.A.No.2570 of 2012:

For Appellant	:	Mr.F.Terry Chella Raja for Ms.M.Malar
For R2	:	Mr.S.Arunkumar

C O M M O N   J U D G M E N T

The matter is heard through "Video Conferencing".

2.C.M.A.No.3716 of 2010 is filed by the Insurance Company against the award dated 19.02.2010 made in M.C.O.P.No.652 of 2005 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri and C.M.A.No.2570 of 2012 is filed by the claimant for enhancement of compensation.

3.Both the Civil Miscellaneous Appeals arise out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimant filed the above said claim petition, claiming a sum of Rs.1,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.08.2005.

5.According to the claimant, on 02.08.2005, at about 12.15 P.M., while the claimant was traveling in the auto bearing Registration No.TN 20 Az 4941 belonging to the 1st respondent on M.R.H. Road from Madhavaram to Moolakadai near Round Church, the driver of the auto drove the same in a rash and negligent manner and dashed against the Transport Corporation bus bearing Registration No.TN 27 N 0534 and caused the accident. In the accident, the claimant sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum of Rs.1,00,000/- as compensation against the respondents 1 and 2, being the owner and insurer of the auto respectively.

6.The 1st respondent-owner of the auto remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. According to 2nd respondent-Insurance Company, the accident has not occurred as alleged by the claimant. The 1st respondent has to produce the original insurance policy of the auto. The driver of the auto belonging to 1st respondent was not possessing valid and effective driving license at the time of accident. The 1st respondent knowing fully well that the driver of the auto did not possess driving license, handed over the possession of the vehicle to the said driver and committed breach of terms and conditions of the policy. The claimant traveled in the auto as unauthorized passenger and there is no policy coverage for the unauthorized passenger and hence, the 2nd respondent is not liable to pay any compensation to the claimant. The 1st respondent has not furnished the particulars of policy, date, time and place of accident, particulars of injured and the name of the driver and particulars of driving license. The Police Officials from M-1, Madhavaram Police Station has not forwarded the relevant documents regarding the accident to the insurer within 30 days from the date of accident. Hence, the 2nd respondent-Insurance Company is not liable to pay any compensation to the claimant. The claimant has to prove his age, avocation, income, nature of injuries and period of treatment taken by producing valid documents. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Thiagarajan was examined as P.W.2 and 5 documents were marked as Exs.P1 to P5. On behalf of the 2nd respondent-Insurance Company, Dr.Vijay was examined as R.W.1, one K.S.Soundararajan was examined as R.W.2 and Srinivasan, official from 2nd respondent-Insurance Company was examined as R.W.3 and 3 documents were marked as Exs.R1 to R3.

9.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 auto belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the auto to pay a sum of Rs.51,6000/- as compensation to the claimant.

10.Challenging the said award dated 19.02.2010 made in M.C.O.P.No.652 of 2005, the 2nd respondent-Insurance Company has come out with the appeal in C.M.A.No.3716 of 2010 and the claimant has come out with the appeal in C.M.A.No.2570 of 2012 seeking enhancement of compensation.

11.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in awarding a sum of Rs.51,600/- as compensation against the 2nd respondent-Insurance Company inspite of the fact that the 1st respondent-owner of the auto willfully violated the policy condition. The 1st respondent despite receiving notice from the Tribunal, failed to appear and contest the case. The Tribunal ought to have taken adverse inference, when there was no enforceable contract between the respondents 1 and 2, the owner and insurer of the auto. The 2nd respondent discharged its burden by examining R.W.2, R.W.3 and marking Exs.R1 to R3. The Tribunal failed to consider the documents filed by the claimant and 2nd respondent-Insurance Company. The Tribunal ought to have held that claimant traveled only as gratuitous passenger and 2nd respondent-Insurance Company proved the same by examining R.W.2 and R.W.3 and marking Exs.R1 to R3. The Tribunal ought to have directed only the 1st respondent, who is the owner of the auto to pay the compensation to the claimant. In any event, the disability assessed by P.W.2/Doctor is exaggerated and the Tribunal erred in accepting the same. The Tribunal failed to note that alleged injuries sustained by the claimant are not permanent in nature and prayed for setting aside the award of the Tribunal.

12.Per contra, the learned counsel appearing for the claimant contended that while the claimant was traveling in the auto, the driver of the auto drove the same in a rash and negligent manner and dashed against the bus and caused the accident. The claimant sustained injuries in the accident. He has proved the negligence on the part of the driver of the auto by examining himself as P.W.1 and marked F.I.R. as Ex.P1 and proved the injuries and disability by examining P.W.2/Doctor. At the time of accident, the auto was insured with the 2nd respondent-Insurance Company and the Tribunal considering Ex.R3/Insurance Policy, directed the 2nd respondent-Insurance Company to pay the compensation to the claimant. There is no error in the award of the Tribunal directing the 2nd respondent-Insurance Company to pay the compensation. He further contended that the claimant was aged 41 years at the time of accident and was working as an Agricultural Coolie and was earning a sum of Rs.150/- per day. The notional income fixed by the Tribunal at Rs.2,000/- per month is meagre when the claimant was earning a sum of Rs.150/- per day. In the accident, the claimant sustained grievous injuries. P.W.2/Doctor examined the claimant and certified that claimant suffered 40% disability. The Tribunal reduced the percentage of disability to 30% and awarded compensation for 30% of disability at the rate of Rs.1,500/- per percentage of disability. The claimant is entitled to compensation for 40% of disability as per the judgment of the Hon'ble Apex Court reported in 2008 (1) TNMAC 8, [United India Assurance Company Limited, Divisional Office, Old Bangalore House, Hosur Post, Hosur Taluk Vs. 1.R.Chinnaraj and others]. The claimant has taken treatment as inpatient in Stanley Hospital and continued his treatment as out patient. The amounts awarded by the Tribunal towards attendant charges, loss of amenities are meagre and prayed for dismissal of C.M.A.No.3716 of 2010 filed by the 2nd respondent-Insurance Company and for enhancement of compensation.

13.Heard the learned counsel appearing for the 2nd respondent as well as the learned counsel appearing for the claimant and perused the entire materials on record.

14.The 1st respondent-owner of the auto remained exparte before the Tribunal. Hence, notice to 1st respondent is dispensed with.

15.The main contention of the learned counsel appearing for the 2nd respondent-Insurance Company is that the auto belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company involved in the accident is a goods vehicle. In a goods vehicle, a person cannot travel as a passenger. If a person travels as a passenger, he is only a gratuitous passenger and Insurance Company is not liable to pay the compensation. In the present case, the 2nd respondent has taken a specific stand that the auto belonging to the 1st respondent is a goods vehicle and claimant traveled as gratuitous passenger. The 2nd respondent proved the said contention by examining R.W.2, R.W.3 and marked Ex.R2/R.C. Book, which shows that the auto belonging to the 1st respondent is only a goods vehicle. From the materials available on record, it is seen that the claimant has not pleaded and proved that he traveled in the auto along with goods at the time of accident as owner or representative of the owner of the goods. The Tribunal has not considered the plea of the 2nd respondent-Insurance Company that the claimant traveled as gratuitous passenger in the goods vehicle. Considering the above materials, this Court is of the view that claimant traveled in the goods vehicle as gratuitous passenger and hence, he is not entitled to get compensation from the 2nd respondent-Insurance Company. The claimant is entitled to get compensation only from the 1st respondent-owner of the auto.

16.From the materials available on record, it is seen that P.W.2/Doctor examined the claimant and certified that claimant suffered 40% disability and P.W.2/Doctor deposed that percentage of disability may differ from 5% to 10% from Doctor to Doctor. Considering the evidence of P.W.2/Doctor and in the absence of contra evidence to the evidence of P.W.2/Doctor, the claimant is entitled to compensation for 40% of disability as assessed by P.W.2/Doctor. The accident occurred in the year 2005 and the Tribunal has granted a sum of Rs.1,500/- per percentage of disability and the same is proper. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.60,000/- (Rs.1,500/- X 40% of disability). The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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	45,000/-	60,000/-	Enhanced
2.	Loss of income	2,000/-	2,000/-	Confirmed

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
3.	Transportation	300/-	300/-	Confirmed
4.	Extra nourishment	300/-	300/-	Confirmed
5.	Damages to clothes	500/-	500/-	Confirmed
6.	Medical expenses	500/-	500/-	Confirmed
7.	Pain and sufferings	3,000/-	3,000/-	Confirmed
	Total	Rs.51,600/-	Rs.66,600/-	Enhanced by Rs.15,000/-

17.The compensation awarded by the Tribunal at Rs.51,600/- is hereby enhanced to Rs.66,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent-owner of the auto is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this common judgment to the credit of M.C.O.P.No.652 of 2005 on the file of Motor Accidents Claims Tribunal, Sub Court, Ponneri. On such deposit, the claimant is permitted to withdraw the 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. It is made clear that if any amount is deposited by the 2nd respondent-Insurance Company and the same was withdrawn by the claimant, the 2nd respondent is not entitled to recover the same. However, the 2nd respondent is permitted to recover the amount only from the 1st respondent. The 2nd respondent-Insurance Company is permitted to withdraw the award amount if any lying in the deposit to the credit of M.C.O.P.No.652 of 2005, if the entire award amount is already deposited by the 2nd respondent-Insurance Company.

18.In the result C.M.A.No.3716 of 2010 filed by the Insurance Company is allowed and C.M.A.No.2570 of 2012 filed by the claimant is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)
dt 09/04/2021

//True Copy//

Sub Assistant Registrar

krk

To

1. The Subordinate Judge,
   Motor Accidents Claims Tribunal,
   Ponneri.

2. The Section Officer,
   VR Section,
   High Court,
   Madras.

+1cc to Ms.M.Malar, Advocate, S.R.No.38212
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.38300

C.M.A.Nos.3716 of 2010 & 2570 of 2012

EV(CO)
HS(16/08/2021)