IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1896 of 2011
and M.P.No.1 of 2011

G.Sivaramakrishna Sarma .. Appellant/Petitioner/Claimant

Vs.

1.R.Sakthivel

2.The New India Assurance Company Ltd.
No.92, G.N.Chetty road
East Coast Chamber
T.Nagar, Chennai-600 017. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.12.2010 made in M.C.O.P.No.3070 of 2003 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mrs.Sriprada Abhinav
for Mr.M.Aravind Subramaniam

For R2 : Mrs.C.Sangamithirai

J U D G M E N T

The matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company as well as for enhancement of compensation granted by the Tribunal in the award dated 08.12.2010 made in M.C.O.P.No.3070 of 2003 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.3070 of 2003 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by him in the accident that took place on 10.03.2003.

3.According to the appellant, on the date of accident i.e., on 10.03.2003 at about 21.00 hours, while the appellant was riding in his TVS champ from Nanganallur to Adyar from South to North direction at Cement Road, an Ambassador car belonging to the 1st respondent, driven by its driver in a rash and negligent manner from North to South direction, hit the two wheeler and caused the accident. Due to the accident, the appellant sustained grievous injuries all over the body and hence, he filed the above said claim petition claiming compensation against the respondents.

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

5.The 2nd respondent/Insurance Company being insurer of the car filed counter statement denying the averments made in the claim petition and stated that the cheque issued by the 1st respondent towards payment of premium for the insurance coverage was returned by the banker for insufficiency of funds. Therefore, the policy was cancelled on the date of inception and the same was intimated to the 1st respondent, owner of the vehicle and concerned RTO. The accident has occurred after the cancellation of the policy. The driver of the car belonging to the 1st respondent was not responsible for the accident and the accident has occurred due to rash and negligent riding by the appellant. The 2nd respondent has also denied the age, avocation, income and nature of injuries suffered by the appellant. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Thiagarajan was examined as P.W.2 and marked 23 documents as Exs.P1 to P23. On the side of the 2nd respondent/Insurance Company, Mr.R.S.Ramesh and Mr.Asokan, officials of the 2nd respondent/Insurance Company were examined as R.W.1 and R.W.2 and ten documents were marked as Exs.R1 to R10.

7.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 car belonging to the 1st respondent, directed the 1st respondent to pay a sum of Rs.64,800/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company as the car was not insured with the 2nd respondent on the date of accident.

8.Challenging the portion of the award dismissing the claim petition as against 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 contended that the Tribunal erred in dismissing the claim petition as against the 2nd respondent/Insurance Company and directed the 1st respondent to pay the compensation without any basis. The Tribunal failed to see that the 2nd respondent/Insurance Company has not furnished the details of the cancellation of policy, intimation to the owner, the 1st respondent herein and the dates on which the letters Exs.R8 to R10 were sent to the 1st respondent and concerned RTO. The Tribunal also failed to see that the 2nd respondent has not produced any acknowledgment card for having served the intimation about the cancellation of policy and also for Exs.R4, R8 to R10 and prayed for setting aside the award of the Tribunal dismissing the claim petition as against the 2nd respondent and for a direction to the 2nd respondent to pay the compensation to the appellant.

10.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the 1st respondent has issued a cheque dated 30.10.2002 for payment of premium. The cheque was dishonoured on 01.11.2002. The 2nd respondent cancelled the policy on the same day and by Exs.R4, R8 to R10, intimated the same to the 1st respondent and concerned RTO. On the date of accident, there was no policy in existence for the offending vehicle. The Tribunal considering the same, rightly dismissed the claim petition as against the 2nd respondent/Insurance Company. There is no error in the award of the Tribunal 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 the entire materials on record.

12.From the materials on record, it is seen that the 1st respondent issued a cheque dated 30.10.2002 drawn on Bharath Overseas Bank being the premium for the issuance of policy payable to the 2nd respondent. According to the 2nd respondent, the cheque was dishonourned and returned for insufficient funds. The second respondent cancelled the policy and informed the same to the 1st respondent and concerned RTO. To substantiate this contention, the 2nd respondent/Insurance Company examined R.W.1 and R.W.2/officials from their office and produced Exs.R4, R8 to R10, the alleged letters intimating the 1st respondent and RTO. From the award of the Tribunal and the counter statement filed by the 2nd respondent, it is seen that the 2nd respondent has not furnished any details as to when the cheque was returned and when they intimated the same to the 1st respondent and RTO.

13. On perusal of Exs.R4, R8 to R10, it is seen that the said letters were addressed to RTO and 1st respondent by registered post with Acknowledgment due. But the 2nd respondent has not filed any proof for having sent the said Exs.R4, R8 to R10, the 1st respondent and RTO had received the said letters. The 2nd respondent has not filed the receipt for having sent the letters by registered post with acknowledgment due and acknowledgment card for proof of having received by the 1st respondent and RTO to show that the letter intimating the cancellation of policy was served on the 1st respondent and RTO before the date of accident. The Tribunal failed to consider the failure on the part of the 2nd respondent to furnish the above details as well as acknowledgment card for having served letters and intimation to the 1st respondent and concerned RTO.

14.For the above reason, the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company is liable to be set aside and is hereby set aside. The 2nd respondent/Insurance Company being insurer of the car belonging to the 1st respondent is liable to pay compensation to the appellant.

15.As far as quantum of compensation is concerned, it is the contention of the appellant that in the accident, he sustained head injury, partial bone fracture, lacerated injury over scalp and was taken treatment as in-patient in Balaji hospital, Guindy, from 10.03.2003 and 11.03.2003 and again at Isabella Hospital, Mylapore, from 11.03.2003 to 14.03.2003. The appellant contended that due to the injuries suffered in the head, he could not continue his work as he was doing earlier. To prove the injuries, the appellant examined himself as P.W.1 and examined Dr.Thiagarajan as P.W.2. P.W.2/Doctor examined the appellant and assessed the disability of the appellant as 30%. The Tribunal awarded a sum of Rs.30,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The accident is of the year 2003. The appellant is entitled to a sum of Rs.1,250/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.37,500/- (Rs.1,250/- X 30%).

15(i) According to the appellant, he was aged 53 years at the time of accident, was working as an Accounts officer in Clinichem Pharmaceuticals Pvt. Ltd. and was earning a sum of Rs.5,000/- per month. To prove the same, the appellant marked his salary certificate as Ex.P.1. The Tribunal considering Ex.P1-salary certificate, fixed the monthly income of the appellant as Rs.5,000/- and awarded a sum of Rs.10,000/- towards loss of income for a period of two months. Due to the injuries and disability, the appellant would not have worked atleast for a period of four months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.20,000/- (Rs.5,000/- X 4). The amounts awarded by the Tribunal towards transportation and extra nourishment are meagre and hence, the same are hereby enhanced to Rs.5,000/- each. The amounts awarded by the Tribunal under all 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 or reduced
1.	Loss of income	10,000	20,000	Enhanced
2.	Transportation	1,500	5,000	Enhanced
3.	Extra nourishment	2,000	5,000	Enhanced
4.	Damage to clothes	500	500	Confirmed
5.	Medical expenses	10,800	10,800	Confirmed
6.	Pain and suffering	10,000	10,000	Confirmed
7.	Permanent disability	30,000	37,500	Enhanced
	Total	64,800	88,800	Enhanced by Rs.24,000/-

16.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.64,800/- is hereby enhanced to Rs.88,800/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant 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 cost, 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 along with interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
   IV Small Causes Court, Chennai.

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

+1cc to Mr.M.Aravind Subramaniam, Advocate SR.No.34181

+1cc to Mrs.C.Sangamithirai, Advocate SR.No.34204

C.M.A.No.1896 of 2011

VBA(CO)
GMY(06/11/2020)