

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1895 of 2013

P.Hariraman

.. Appellant/Petitioner

Vs.

1.Shanmugavel

2.The New India Assurance Company Limited,
No.45, Moore Street,
Chennai - 600 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2008 made in M.C.O.P.No.4611 of 2004 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja
for Ms.M.Malar

For R2 : Mr.M.Krishnamoorthy

For R1 : Exparte

J U D G M E N T

The matter is heard through "Video Conferencing".

2.This Civil Miscellaneous Appeal has been filed against the award dated 30.10.2008 made in M.C.O.P.No.4611 of 2004 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai.

3.The appellant is the claimant in M.C.O.P.No.4611 of 2004 on the file of the Motor Accidents Claims Tribunal, III Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.06.2004.

4. According to the appellant, on 24.06.2004 at about 04.00 A.M., while he was travelling in the goods van bearing Registration No. TN 10 H 5977 on Madipakkam - Koyambedu road, the driver of the van drove the same in a rash and negligent manner and dashed against a stationary mini lorry bearing Registration No. TCH 6417 and caused the accident. In the accident, the appellant sustained multiple grievous injuries all over his body. Therefore, the appellant filed the said claim petition claiming a sum of Rs. 8,00,000/- as compensation for the injuries sustained by him against the respondents, being the owner and insurer of the van respectively.

5. The 1st respondent-owner of the van remained exparte before the Tribunal.

6. The 2nd respondent-Insurance Company, being the insurer of the van filed counter statement and denied all the averments made by the appellant. According to 2nd respondent-Insurance Company, the van belonging to the 1st respondent was a goods carrying vehicle and it is not a passenger carrying van. The appellant travelled in the van as an unauthorized passenger. The documents produced by the appellant were fabricated documents and they are created only for the purpose of claiming compensation. The 2nd respondent denied that the driver of the van belonging to 1st respondent was possessing valid driving license and the 1st respondent's van was having valid insurance policy at the time of accident. The 1st respondent's van did not possess valid permit and fitness certificate. The quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the appellant examined himself as P.W.1 and one Dr. N. Saichandran as P.W.2 and 10 documents were marked as Exs. P1 to P10. The 2nd respondent-Insurance Company did not let in any oral and documentary evidence.

8. 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 van belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs. 1,74,305/- as compensation to the appellant and dismissed the claim petition against the 2nd respondent-Insurance Company on the ground that the driver of the 1st respondent's van was not possessing valid driving license and also the appellant travelled in the van as an unauthorized passenger at the time of accident.

9. Challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company and for enhancement of compensation, the appellant has come out with the

present appeal.

10.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition as against the 2nd respondent-Insurance Company on the ground that appellant was an unauthorized passenger when the 2nd respondent-Insurance Company did not let in any contra evidence to prove the same. He further contended that appellant was travelling in the van to purchase vegetables for his business. The Tribunal erred in dismissing the claim petition against the 2nd respondent-Insurance Company on the ground that there was no insurance at the time of accident and the driver of the 1st respondent's van did not possess driving license. The appellant has taken treatment as in-patient from 24.06.2004 to 07.07.2004 and again from 24.04.2005 to 28.04.2005 for two occasions and underwent two surgeries. Due to the injuries in the spinal cord, he suffered more pain and could not continue his normal life. The Tribunal erred in reducing the percentage of disability from 55% to 30% and awarded meagre amount as compensation and prayed for allowing the appeal directing the 2nd respondent-Insurance Company to pay the compensation and for enhancement of compensation.

11.Per contra, Mr.M.Krishnamoorthy, learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal rightly dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that appellant traveled in the 1st respondent's van as an unauthorized passenger and also the driver of the 1st respondent's van was not possessing valid driving license at the time of accident. The Tribunal rightly reduced the percentage of disability from 55% to 30% and awarded compensation. The Tribunal considering entire materials on record has awarded a sum of Rs.1,74,305/- as compensation to the appellant, which is not meagre. The appellant has not made out any case for fixing liability on the 2nd respondent and for enhancement of compensation and prayed for dismissal of the appeal.

12.The 1st respondent remained exparte before the Tribunal. Hence, notice to 1st respondent dispensed with.

13.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

14.From the materials available on record, it is seen that the appellant in the claim petition has stated that while he was traveling in the van bearing Registration No.TN 10 H 5977, the driver of the van belonging to the 1st respondent drove the same in a rash and negligent manner and hit the Tata 807 Lorry

bearing Regn.No.TCH 6417 and caused the accident. In the accident, the appellant and others sustained multiple grievous injuries. The accident has occurred due to the rash and negligent driving by the driver of the van. It is the case of the 2nd respondent-Insurance Company that the vehicle involved in the accident is a goods carrying vehicle and passengers are not permitted to travel in the van. The appellant traveled as an unauthorized passenger and hence the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellant. From the materials, it is seen that the appellant has not stated in the claim petition that he traveled in the van along with the goods or as an authorized representative of the owner of the goods. The appellant contended that he traveled in the van for purchasing vegetables for his business and in the claim petition he has stated that he is a vegetable vendor. A reading of the claim petition shows that the appellant has not stated that he was going to Koyambedu to purchase vegetables. Without any pleading, the appellant cannot let in any evidence or argue the matter contrary to what is stated in the claim petition. It is admitted that appellant traveled in the goods carrying vehicle as a passenger. This amounts to appellant traveled as an unauthorized passenger in a goods carrying vehicle. The 2nd respondent-Insurance Company is not liable to pay any compensation for unauthorized passengers. The Tribunal has considered all the materials on record and held that 2nd respondent-Insurance Company is not liable to pay the compensation. There is no error in the said finding of the Tribunal.

15.As far as quantum of compensation is concerned, the appellant claimed that he was earning a sum of Rs.300/- per day by doing vegetable business. He has not substantiated the same by producing valid documents. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.1,250/- per month as notional income of the appellant. The accident occurred in the year 2004 and the monthly income fixed by the Tribunal is meagre. A sum of Rs.3,500/- per month is fixed as notional income of the appellant. The appellant deposed about the nature of injuries and examined P.W.2/Doctor to substantiate the same. P.W.2/Doctor examined the appellant and assessed the percentage of disability suffered by the appellant as 55% and deposed to that effect. The appellant has not let in any evidence to show that due to the injuries and disability, he lost his earning capacity, he is totally disabled and could not do the work as he was doing earlier. In view of the same, the Tribunal has awarded compensation by adopting percentage method. There is no error in the same. The Tribunal has awarded a sum of Rs.5,000/- towards loss of income for four months at the rate of Rs.1,250/- per month. The appellant is entitled to a sum of Rs.14000/- towards

loss of income for four months @ Rs.3,500/- per month. A sum of Rs.160/- awarded by the Tribunal towards transportation is meagre and the same is enhanced to Rs.500/-. The amounts awarded by the Tribunal towards disability, extra nourishment, damages to clothes, other expenses, medical expenses, pain and sufferings, loss of amenities and loss of expectation of life 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/-	45,000/-	Confirmed
2.	Pain and sufferings	15,000/-	15,000/-	Confirmed
3.	Loss of income	5,000/-	14,000/-	Enhanced
4.	Extra nourishment	2,000/-	2,000/-	Confirmed
5.	Transportation	160/-	500/-	Enhanced
6.	Medical expenses	85,145/-	85,145/-	Confirmed
7.	Other expenses	1,000/-	1,000/-	Confirmed
8.	Loss of amenities	10,000/-	10,000/-	Confirmed
9.	Damages to clothes	1,000/-	1,000/-	Confirmed
10.	Los of expectation of life	10,000/-	10,000/-	Confirmed
	Total	Rs.1,74,305/-	Rs.1,83,645/-	enhanced by Rs.9,340/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,74,305/- is hereby enhanced to Rs.1,83,645/- 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 the necessary Court fee, if any on the enhanced amount of compensation. The 1st respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4611 of 2004 on the file of the Motor Accidents Claims Tribunal, III Small

Causes Court, Chennai. 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 award of the Tribunal dismissing the claim petition against the second respondent is confirmed and the appeal against the 2nd respondent is dismissed. It is made clear that the appellant is not entitled to any interest for Rs.9,340/- the amount now enhanced by this Court, as per the order of this Court dated 04.06.2013 made in M.P.No.1 of 2010 in C.M.A.No.SR.92856 of 2010. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

krk

To

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

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

+lcc to Mrs.M.Malar, Advocate, S.R.No.33253

C.M.A.No.1895 of 2013

PVS (CO)
CB(30/04/2021)