IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.10.09.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2169 of 2012 &
C.M.P.No.8419 of 2020

V.Baskar ... Appellant/Petitioner

vs.

1.Srinivasan
2.The Oriental Insurance Co. Ltd.,
United India Building,
Esplanade,
Chennai - 600 108. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in O.P.No.3683 of 2003 dated 09.11.2011 on the file of the III Judge, Small Causes Court, (Motor Accident Claims Tribunal, Chennai).

For Appellants : Mr.A.Shanmugaraj

For Respondent 2 : Mr.M.J.Vijayaraghavan

For Respondent 1 : Exparte before the Tribunal

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This Appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 09.11.2011 passed by the Motor Accident Claims Tribunal (III Court of Small Causes, Chennai) in MCOP.No.3683 of 2003.

2. Heard Mr.A.Shanmugaraj, learned counsel for the Appellant and Mr.M.J.Vijayaraghavan, learned counsel for the second respondent. The first respondent has remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with.

3. The Appellant/claimant sustained injuries on 27.01.2002 as a result of an accident caused by a vehicle owned by the first respondent. He preferred a claim under section 163-A of the Motor Vehicles Act before the Tribunal, seeking compensation alleging that the said vehicle was owned by the first respondent

and insured with the second respondent.

4. The Motor Accident Claims Tribunal under the impugned award dated 09.11.2011 passed in MCOP.No.3683 of 2003 exonerated the liability of the second respondent/insurance company on the ground that the rider of the motorcycle did not possess a driving license at the time of the accident and directed the first respondent to pay the Appellant/claimant a compensation of Rs.53,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of income for 3 months	4,500/-
Transportation	1,000/-
Extra nourishment	500/-
Medical expenses	2,000/-
Pain and suffering	5,000/-
Disability of 40%	40,000/-
Total	53,000/-

5. Aggrieved by the finding of the Tribunal exonerating the liability of the second respondent and also aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant/claimant has preferred the appeal.

6. After the filing of this Appeal, the Appellant has also filed CMP.No.8419 of 2020 seeking permission of this Court to raise additional grounds namely (a) The Motor Accident Claims Tribunal failed to note that the 2nd respondent (Insurance Company) failed to prove that the rider of the Motor Cycle didn't have licenseat the time of accident and as such the Insurance Company is liable to pay the compensation and (b) the Motor Accident Claims Tribunal ought to have passed an award against the Insured Company, even though the rider of the motor cycle TSA 2292 did not have valid driving license on the date of accident 27.01.2002, as per the settled position of law.

7. The Tribunal has exonerated the liability of the second respondent/insurance company only on the ground that the rider of the motorcycle was not possessing driving licence at the time of the accident. However, the respondents before the Tribunal have not produced any evidence to show that the notice sent by them to the insured as well as to the rider of the motorcycle calling upon them to produce a copy of the driving licence was

received or not. Further, it is settled law that just because the rider of the motorcycle was not possessing driving license, the insurance company cannot be absolutely absolved from any liability. As per the settled law, in case if the rider of the motorcycle did not possess a driving licence, the insurance company will have to pay the compensation amount to the claimant and recover the same from the insured (owner of the vehicle). In view of the above, CMP.No.8419 of 2020 filed by the Appellant/claimant seeking permission of this Court to raise additional grounds as stated supra has to be necessarily allowed. Accordingly, the same is allowed by this Court.

8. The claim petition has been filed under Section 163-A of the Motor Vehicles Act where it is not required for the claimant to prove the negligence against the driver of the insured vehicle.

9. The Appellant/claimant has sustained the following injuries namely (a) right leg abrasion, (b) sutured wound over forehead, (c) laceration in right foot (d) fracture of nasal bone and (e) fracture of right leg as a result of the accident.

10. Before the Tribunal, the Appellant/claimant has filed ten documents which were marked as Ex.P1 to Ex.P10 and two witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the second respondent insurance company, three documents were filed namely Ex.R1, the authorisation letter issued by the second respondent/insurance company in favour of its official, Ex.R2, the insurance policy and Ex.R3, returned cover with courier slip and one witness was also examined namely Mr.V.Manoharan, the Administrative Officer of the second respondent/insurance company before the Tribunal.

11. The accident has not been disputed by the second respondent/insurance company before the Tribunal. Further under Section 163-A of the Motor vehicle Act, no negligence needs to be established by the claimant for seeking compensation. However, the compensation will have to be assessed by the Tribunal in accordance with schedule-II of the Motor Vehicles Act on structured formula basis. Despite the claim having been filed under section 163-A of the Motor Vehicles Act, the Tribunal has erroneously awarded compensation under Section 166 of the Motor Vehicles Act. If the compensation was awarded under Section 163-A of the Motor Vehicles Act, the Tribunal cannot award compensation towards Transportation, extra nourishment charges and the disability compensation. But the Tribunal has erroneously awarded compensation under those heads also.

12. This Court after giving due consideration to the nature

of injuries sustained by the Appellant/claimant and the conservative treatment given to the Appellant/claimant for his injuries reworks the compensation as per the discussion in the below mentioned paragraph.

13. In the claim petition, the Appellant/claimant has pleaded that he was a helper for two wheeler mechanic and earning Rs.50 per day at the time of the accident. The Tribunal has accepted the same and assessed the monthly income of the Appellant/claimant at Rs.1,500/-. This Court is in agreement with the assessment of the Tribunal that the monthly income of the Appellant/claimant is Rs.1,500/-. However, the Tribunal has awarded a sum of Rs.4,500/- as compensation towards loss of income during the period of his treatment for three months. After giving due consideration to the nature of injuries sustained by the Appellant/claimant who was a helper in a mechanic shop, this Court is of the considered view that at least for a period of six months, he would have been unable to do his regular work as a helper to a mechanic. Accordingly, this Court awards a compensation of Rs.9,000/- towards loss of income during the period of treatment calculated at Rs.1,500/- per month for a period of six months to the Appellant/claimant.

14. The Doctor (PW2) who examined the Appellant/claimant has assessed his disability at 60%. However, the Tribunal has reduced the same to 40%. But the Tribunal has failed to take into consideration the whole body disability for the purpose of calculating the disability compensation. This Court after giving due consideration to the nature of injuries sustained by the Appellant/claimant, fixes the whole body disability of the Appellant/claimant at 20%. Since the Appellant/claimant was 17 years at the time of the accident, the correct multiplier to be adopted is 18. Accordingly, this Court awards a compensation of Rs.64,800/- (1500 x 12 x 18 x 20%) towards loss of earning power to the Appellant/claimant.

15. This Court after giving due consideration to the nature injuries sustained by the Appellant/claimant, awards a compensation of Rs.5,000/- towards pain and suffering.

16. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

(a) pain and suffering for Grievous injury	- Rs.5,000/-
(b) Loss of Income for 6 months	- Rs.9,000/-
(c) Loss of earning Power (1500 x 12 x 18 x 20%)	- Rs.64,800/-
	Rs.78,800/-

17. With regard to the liability of the second respondent/insurance company, it is now settled law that if the

rider of the motorcycle was not possessing driving licence at the time of the accident, the insurance company is liable to compensate the claim and recover the same from the insured. However, the Tribunal has failed to take note of the settled law and has erroneously exonerated the second respondent/insurance company from any liability under the impugned award. In view of the settled law, the second respondent/insurance company is liable to pay compensation to the Appellant/claimant and recover the same from the first respondent who is the insured.

Conclusion:

18. In the result, CMP.No.8419 of 2020 is allowed as prayed for and this appeal is partly allowed by modifying the compensation from Rs.53,000/- to Rs.78,800/- and also by granting pay and recovery rights to the second respondent/insurance company. However, the rate of interest fixed by the Tribunal at 7.5% per annum is confirmed. The second respondent insurance company is directed to deposit the modified award amount together with interest from the date of claim till the date of deposit excluding the period of delay in filing this Appeal and costs, after deducting the amount already deposited if any to the credit of MCOP.No.3682 of 2003 within a period of four weeks from the date of receipt of a copy of this Judgment and also permitted to recover the same from the (insured) owner of the vehicle by filing an execution petition before the same Tribunal. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.3682 of 2003 to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs. The requisite court fee, if any, is required to pay by the Appellant/claimant for the enhanced award amount before obtaining a copy of this Judgment.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

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

Copy To

The Section Officer,
VR Section, High Court,
Chennai.

C.M.A.No.2169 of 2012

SSV(CO)
GN(10/05/2021)