IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.11.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.131 of 2016

Ramachandran ... Appellant/Petitioner

/versus/

1. Rajan

(Since R1 remained exparte before the Tribunal
his presence may be dispense with)

2.Reliance General Insurance Co. Ltd.,
Having its office at
RAI's Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
(Next to Senthil Nursing Home),
Anna Nagar,
Chennai - 600 040. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.07.2014 and made in MACTOP.No.691 of 2011 on the file of the Motor Accident Claims Tribunal and Additional District Judge, Ponneri.

For Appellant	:	Ms.A.Subadra for Ms.M.Malar
For Respondent 2	:	Mr.S.Arun kumar
For R1	:	exparte

JUDGMENT
(The Case has been heard through Physical Hearing)

Heard the learned counsel for the Appellant and the learned counsel for the second respondent.

2. This Appeal is filed for the enhancement of compensation.

3. On 21.11.2011 at 06.00 pm., when the claimant was travelling in an auto bearing registration No.TN73-Z-7123 due to the rash and negligent driving by the driver of the auto, an accident occurred, in which, the claimant sustained severe injuries leading to amputation of his right leg above the knee and fracture of both bone of left leg and also fracture of both

bone right forearm.

4. Claiming compensation of Rs.10,00,000/-, a petition was filed before the Claims Tribunal. The claim was resisted by the Insurance Company on the ground that the claimant invited the accident by sitting next to the driver of the auto and contributed for his injury. Further, the auto in which the claimant travelled and sustained injury did not have valid transport documents such as Registration Certificate, Fitness Certificate, Permit and Tax. Since there is a violation of the policy condition and statutory provisions, the insurance company is not liable to indemnify the auto owner.

5. The Tribunal on considering the evidence and rival submissions, awarding a sum of Rs.7,55,000/- under the following heads:

Particulars	Amount (Rs.)
Transport to Hospital	10,000/-
Extra nourishment	10,000/-
Pain and sufferings	20,000/-
Disability 70%	1,40,000/-
Medical expenditure	5,55,000/-
Loss of income	20,000/-
Total	7,55,000/-

6. The present appeal is filed being unsatisfied with the quantum of compensation.

7. The learned counsel for the Appellant would specifically contend that the claimant has lost his right leg and fracture of his left leg besides fracture of his right forearm. For the said injury, particularly, amputation of the right leg, the Tribunal ought to have applied multiplier and awarded an adequate compensation. Fixation of Rs.1,40,000/- towards 70% disability is very meagre. Further, the learned counsel for the Appellant would also submit that the claimant as an agriculturist was earning a sum of Rs.12,500/- per month and due to this accident, he lost his earning capacity. For the said functional disability, multiplier has to be applied.

8. The learned counsel for the Insurance Company would submit that at the time of the accident, the claimant was 65 years old and he had no stable income. For the accident, the claimant has contributed by sitting next to the auto driver seat instead of sitting in the place provided for passengers. Further, the learned counsel for the Insurance Company would also submit that the vehicle owner (Insured) has violated the policy condition and permit condition by overloading the vehicle

using it as a share auto.

9. Upon hearing the rival submissions, this Court finds that the Tribunal was erred in awarding a compensation fixing Rs.2,000/- per percentage of disability instead of awarding compensation by applying multiplier, since the injury is a scheduled injury namely amputation of right leg above knee. Taking note of the age and the avocation of the injured, this Court fixes the income of the injured claimant notionally at Rs.3,000/- per month and applies multiplier 7, since the nature of injury indicates that he had completely lost his capacity to earn and become fully dependent, the compensation towards loss of earning capacity is arrived at Rs.2,52,000/- (Rs.3,000 x 7 x 12). The compensation awarded by the Tribunal on the other non-conventional heads and medical expenditure is confirmed.

10. The award passed by the Tribunal is therefore modified as below:-

Particulars	Amount (Rs)
Transport to Hospital	10,000/-
Extra nourishment	10,000/-
Pain and sufferings	20,000/-
Loss of earnings	2,52,000/-
Medical expenditure	5,55,000/-
Loss of income	20,000/-
Total	8,67,000/-

11. As a result, the compensation of Rs.,7,55,000/- awarded by the Tribunal is enhanced to Rs.8,67,000/- with 7.5% interest from the date of petition till the date of deposit. The second respondent/Insurance Company shall deposit the award amount with interest within a period of 8 weeks from today. On such deposit, the Appellant is permitted to withdrawn the same on filing proper application. Since there is a violation of the policy condition by the owner of the vehicle, the second respondent, Insurance Company is permitted to recover the amount deposited by them from the (Insured) owner of the vehicle following the principles laid down in the case of Oriental Insurance Co. Ltd. vs. V.Nanjappan and others reported in 2004 (1) TN MAC 211 (SC).

12. Accordingly, the Civil Miscellaneous Appeal is Partly-Allowed. No order as to cost.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Motor Accident Claims Tribunal
and Additional District Judge, Ponneri.

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

+1cc to Mr.M.Malar, Advocate, S.R.No. 36809
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No. 36804

C.M.A.No.131 of 2016

SPD(CO)
GN(17/08/2021)