IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3016 of 2011

Chinna Appaiah .. Appellant/Petitioner

Vs.

1.Srikanth

2.The Branch Manager,
The United India Insurance Company,
Branch Office,
Old Bangalore Road,
Hosur, Dharmapuri District. .. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.06.2011 made in M.C.O.P.No.727 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For R2 : Ms.I.Malar

R1 : Not Ready Notice

JUDGMENT

The Civil Miscellaneous Appeal is filed against the award dated 17.06.2011 made in M.C.O.P.No.727 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri.

2.The appellant is the claimant in M.C.O.P.No.727 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri. He filed the said claim petition, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.04.2003.

3.According to the appellant, on 28.04.2003, at about 22.30

hours, while he was travelling in the Auto Rickshaw belonging to the 1st respondent on Hosur - Pedhakootlu Road near Punugan Doddi, the driver of the Auto Rickshaw drove the same in a rash, negligent and reckless manner, lost his control and capsized the Auto Rickshaw and caused the accident. In the accident, the appellant sustained multiple injuries all over his body and he took treatment as in-patient at Government Hospital, Hosur, St.John's Medical College Hospital, Bangalore and Private Nursing Home at Hosur and Krishnagiri. Therefore, he filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation against the respondents 1 and 2, being the owner and insurer of the Auto Rickshaw respectively.

4.The 1st respondent - owner of the Auto Rickshaw remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent-Insurance Company, the accident did not occur as alleged by the appellant. The driver of the Auto Rickshaw drove the same slowly, cautiously and observing all the traffic rules and when he turned the Auto Rickshaw from Main Road to Diversion Road, due to mechanical defects in the brakes,front tyres got burst, the Auto Rickshaw got trembled and fell into a pit. Therefore, the driver of the Auto Rickshaw is not responsible for the accident. The owner of the vehicle did not maintain the vehicle properly and in good condition. Therefore, only the owner of the Auto Rickshaw is responsible for the accident. The accident occurred on 28.04.2003 at 10.30 P.M. but the F.I.R. was lodged only on 30.04.2003 at 10 A.M. Hence, the injuries sustained by the appellant might have caused due to involvement of other vehicle. The driver of the Auto Rickshaw did not have valid driving license and badge at the time of accident. For the violation of policy conditions, the 2nd respondent-Insurance Company is not liable to pay any compensation to the appellant. The appellant has to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined himself as P.W.1 and Dr.T.V.Gandhi was examined as P.W.2 and 4 documents were marked as Exs.A1 to A4. On behalf of the 2nd respondent-Insurance Company, no oral and documentary evidence was let in.

7.The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Auto Rickshaw belonging to the 1st respondent and directed the 1st respondent-owner of the Auto Rickshaw to pay a sum of Rs.1,30,000/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent-Insurance Company on the ground that the driver of the Auto Rickshaw was not having valid driving license or insurance coverage at the time of accident.

8.Challenging the portion of the award dated 17.06.2011 made in M.C.O.P.No.727 of 2003 dismissing the claim petition as against the 2nd respondent-Insurance Company and for enhancement of compensation, the appellant has come out with the present Civil Miscellaneous Appeal.

9.The learned counsel appearing for the appellant contended that the Hon'ble Apex Court as well as this Court have repeatedly held that for non-possession of driving license, the third party who is the injured claimant cannot be affected and pay and recovery has to ordered. It is further contended that the appellant suffered two fractures in the left fore arm and left leg and the Tribunal erred in fixing only 40% disability and awarded a sum of Rs.80,000/- towards disability. The Tribunal failed to award any amount separately for fracture and injuries. The Tribunal has not awarded any amount towards loss of amenities, damages to clothes, attendant charges, loss of income and medical expenses. The accident occurred in the year 2003 and 6% interest awarded by the Tribunal is low and also against the guidelines of Reserve Bank of India and prayed for enhancement of compensation and for a direction to the 2nd respondent-Insurance Company to pay the compensation.

10.Per contra, Mr.Kumaravelan, learned counsel appearing for the 2nd respondent-Insurance Company contended that the driver of the Auto Rickshaw did not possess valid driving license at the time of accident and there was no Insurance Policy in force issued by the 2nd respondent-Insurance Company. The appellant failed to produce the driving license of the 1st respondent and Insurance Policy of the Auto Rickshaw. Hence, the Tribunal has rightly dismissed the claim petition against the 2nd respondent-Insurance Company and directed the 1st respondent-owner of the Auto Rickshaw to pay the compensation to the appellant. He further contended that the amounts awarded by the Tribunal under different heads are excessive and the appellant is not entitled for any enhancement 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-Insurance Company and perused the entire materials on record.

12.It is the contention of the appellant that the driver of the Auto Rickshaw drove the same in a rash and negligent manner and capsized the Auto Rickshaw and due to the same, the appellant sustained multiple injuries. According to the appellant, the Auto Rickshaw was insured with the 2nd respondent-Insurance Company. The 2nd respondent in the counter statement has stated that the driver of the Auto Rickshaw did not possess driving license and the Auto Rickshaw was not insured with the 2ndrespondent-Insurance Company at the time of accident. From the claim petition, it is seen that the appellant in Column No.16 of the claim petition has mentioned the Policy Number and period of Policy and name of the 2nd respondent as insurer. Before the Tribunal, the 2nd respondent-Insurance Company did not examine any of its official to show that the Policy Number mentioned in the claim petition was not issued by them to the owner of the Auto Rickshaw. There is no evidence to show that the 2nd respondent has verified the records and found that no such policy was issued by them. Similarly, the 2nd respondent has not examined any official from RTO to prove that the driver of the Auto Rickshaw did not possess driving license at the time of accident. The Tribunal on mere allegation made by the 2nd respondent-Insurance Company, passed the burden on the appellant to prove that the driver of the Auto Rickshaw had driving license and Insurance Policy issued by the 2nd respondent-Insurance Company was in force at the time of accident. When the 2nd respondent-Insurance Company has come out with the case that the driver of the Auto Rickshaw did not possess driving license and there was no Insurance Policy, it is for the 2nd respondent-Insurance Company to prove the said contention thereby, when the appellant has given the Policy Number and period of Policy issued by the 2nd respondent-Insurance Company to the offending vehicle in the claim petition. For the above reason, the award of the Tribunal dismissing the claim petition as against the 2nd respondent-Insurance Company is liable to be set aside and it is hereby set aside. The 2nd respondent-Insurance Company is liable to pay the compensation to the appellant, as the 2nd respondent-Insurance Company has failed to prove their case.

13.As far as quantum of compensation is concerned, to prove the injuries sustained by the appellant, he examined Doctor as P.W.2, who certified that appellant suffered 40% disability and issued Ex.A3/disability certificate. The Tribunal accepted the same and awarded a sum of Rs.80,000/- towards disability. There was some discrepancies in the nature of injuries and fracture suffered by the appellant in the Accident Register and claim petition. The Tribunal considering the Accident Register and evidence of P.W.2/Doctor, accepted the percentage of disability and awarded compensation at the rate of Rs.2,000/- per percentage of disability for 40% percentage of disability and the same is in order. The Tribunal considering the evidence of P.W.2/Doctor and documents filed, awarded just compensation and hence, the appellant is not entitled to any enhancement towards disability. Due to the injuries and disability, the appellant would have incurred some expenses towards medical treatment. In view of the same, a sum of Rs.10,000/- is awarded towards medical expenses. From the award passed by the Tribunal, it is seen that the Tribunal has granted interest at the rate of 6% per annum, which is not correct. The appellant is entitled to compensation at the rate of 7.5% per annum. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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	80,000/-	80,000/-	Confirmed
2.	Pain and sufferings	20,000/-	20,000/-	Confirmed
3.	Transportation	10,000/-	10,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Medical expenses	-	10,000/-	Granted
	Total	Rs.1,30,000/-	Rs.1,40,000/-	enhanced by Rs.10,000/-

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,30,000/- is hereby enhanced to Rs.1,40,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.727 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri. 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 1st respondent-owner of the Auto Rickshaw is permitted to withdraw the award amount, if any lying in the deposit to the credit of M.C.O.P.No.727 of 2003 on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Krishnagiri, if the award amount has been already deposited by him. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.T.Ravichandran, Advocate, S.R.No. 24407
+1cc to Mr.V.Kumaravelan, Advocate, S.R.No. 24563

C.M.A.No.3016 of 2011

SAI(CO)
GN(20/01/2021)