IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.323 of 2011

Anandan ... Appellant/Petitioner

Vs.

1.Dhandapani

2.The Divisional Manager
The National Insurance Company Limited
No.19, Officer's Line
Vellore. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2010 made in M.C.O.P.No.274 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore.

For Appellant : Mr.C.Prabakaran

For R2 : No appearance

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 16.11.2010 made in M.C.O.P.No.274 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore.

2.The appellant is claimant in M.C.O.P.No.274 of 2005 on the file of Motor Accident Claims Tribunal, Sub Court, Vellore. 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 19.04.2005.

3.According to the appellant, on the date of accident i.e., on 19.04.2005 at about 6.30 a.m., while the appellant was travelling in the van as a coolie along with another coolie worker viz., Manikandan, from Vellore to Arni to unload the goods, near Kannamangalam Forest check post, the 1st respondent, owner-cum-driver of the van, drove the same in a rash and negligent manner, applied sudden break, due to which, the van got capsized and the accident has occurred. 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-cum-driver of the van, remained exparte before the Tribunal.

5.The 2nd respondent/Insurance Company being insurer of the van filed counter statement denying the averments made in the claim petition and stated that the 1st respondent has not paid any premium to cover coolies and he has paid premium to cover the risk of the driver alone. The appellant and one Manikandan have travelled in the goods van as unauthorised passengers. Hence, the 2nd respondent is not liable to pay any compensation to 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.R.Shanmugasundaram was examined as P.W.2 and marked six documents as Exs.P1 to P6. On the side of the 2nd respondent/Insurance Company, one R.Gunasekaran, official of the 2nd respondent/Insurance Company was examined as R.W.1 and copy of the Insurance policy was marked as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, owner-cum-driver of the van and directed the 1st respondent to pay a sum of Rs.42,000/- as compensation to the appellant and dismissed the claim petition as against the 2nd respondent/Insurance Company.

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 failed to consider the evidence and the documents filed by the appellant. The policy issued by the 2nd respondent is a package policy and it covers the driver and coolie travelling in the van. The Tribunal erred in holding that the policy issued by the 2nd respondent did not cover the coolie, who travelled in the van along with the driver. The Tribunal ought to have fixed liability on the 2nd respondent as the Insurance policy was in force at the time of accident. The Tribunal failed to see that the appellant travelled as a coolie and he is a third party. In the accident, the appellant suffered 30% disability. The Tribunal erred in granting only a sum of Rs.20,000/- towards 30% partial permanent disability. The total compensation awarded by the Tribunal is meagre and prayed for setting aside the award dismissing the claim petition as against the 2nd respondent/Insurance Company and for enhancement of compensation.

10.Though notice has been served on the 2nd respondent/Insurance Company and their name is printed in the cause list, there is no representation on behalf of them either in person or through counsel.

11.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12.From the materials available on records, it is seen that it is the contention of the appellant that he travelled in the van as a coolie to unload the goods. The said contention is not contravened by the 2nd respondent/Insurance Company. The specific case of the 2nd respondent is that the 1st respondent has not paid any premium to cover the risk of coolie and premium paid is only to cover the risk of driver. The Tribunal accepted the contention of the 2nd respondent and dismissed the claim petition as against the 2nd respondent/Insurance Company. The Tribunal failed to consider the contention of the appellant that he travelled in the van to unload the goods in proper perspective and dismissed the claim petition as against the 2nd respondent. When the appellant has travelled along with the goods to unload the goods, it means he travelled as an authorised representative of owner of the goods. Without permission and instruction of owner of the goods, a person like appellant who is a coolie cannot load or unload the goods in the commercial vehicle. Once the contention of the appellant that he travelled in the goods vehicle to unload the goods, he has travelled in the vehicle as authorised representative of the owner of the goods. The Insurance policy issued as per Section 147 of the Motor Vehicles Act after amendment, covers owner of the goods or its authorised representative travelling in the goods vehicle and Insurance Company is liable to pay the compensation to such a person travelling in such vehicle. In view of the scope of Section 147 of the Motor Vehicles Act and the fact that the appellant travelled in the goods vehicle to unload the goods, the 2nd respondent/Insurance Company is liable to pay compensation to the appellant.

13. In view of the above materials, 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 van belonging to the 1st respondent is liable to pay compensation to the appellant.

14.As far as quantum of compensation is concerned, it is the contention of the appellant that he was working as a coolie and was earning a sum of Rs.7,500/- per month. In the accident, he suffered injuries, disability and he could not continue his work as he was doing earlier. He examined P.W.2/Doctor and marked Ex.P5/disability certificate and Ex.P6/x-ray. P.W.2/Doctor in his evidence has deposed that the appellant suffered injuries and due to the disability, he cannot continue his work as a coolie. P.W.2/Doctor assessed the disability of the appellant as 30%. The Tribunal reduced the percentage of disability to 20% on the ground that P.W.2/Doctor is not the Doctor who treated the appellant and awarded a sum of Rs.20,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The said reasoning is erroneous. The appellant is entitled to compensation for 30% disability. The accident is of the year 2005 and the appellant is entitled to a sum of Rs.1,500/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.45,000/- (Rs.1,500/- X 30%).

14(i) The appellant claimed that he was earning a sum of Rs.7,500/- by working as a coolie. He failed to substantiate the said contention. The accident is of the year 2005 and hence, a sum of Rs.4,500/- per month is fixed as notional income of the appellant. Due to the injuries and disability, the appellant would not have worked atleast for a period of three months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.13,500/- (Rs.4,500/- X 3). The amounts awarded by the Tribunal towards extra nourishment and pain and suffering are meagre and hence, the same are hereby enhanced to Rs.5,000/- and Rs.10,000/- respectively. The Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and disability suffered by the appellant, a sum of Rs.5,000/- is awarded towards attendant charges. 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.	Disability	20,000	45,000	Enhanced
2.	Transportation	1,000	1,000	Confirmed
3.	Extra nourishment	1,000	5,000	Enhanced
4.	Pain and suffering	5,000	10,000	Enhanced
5.	Loss of earning power and loss of income	5,000	13,500	Enhanced
6.	Medical expenses	10,000	10,000	Confirmed
7.	Attendant charges	-	5,000	Granted
	Total	42,000	89,500	Enhanced by Rs.47,500/-

15.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.42,000/- is hereby enhanced to Rs.89,500/- 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. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Vellore.

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

+1cc to M/s.C.Prabakaran, Advocate Sr.33580
+1cc to M/s.N.B.Surekha, Advocate Sr.33782

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