IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.12.2020	Pronounced on: ...12.2020

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.718 of 2015

R.Sekar @ Doss ... Appellant/Petitioner

Vs

1.M/s.Andhra Cement Carrier,
Rams Building, Flat No.9, 2nd Floor,
No.21, Raja Annamalai Road, Chennai-84.

2.The United India Insurance Co.Ltd.,
Now at No.134, Greems Road, Silingai Buildings,
IV-Floor, HUB, Chennai-6. ... Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.19 of 2012 dated 27.02.2013 on the file of the Sub Court Judge, Motor Accidents Claims Tribunal, Thiruttani.

For Appellant : Mr.R.Ponnusamy for M/s.Anand and Suryas

For Respondents : Mr.A.Dhiraviyanathan for R1
: Exparte for R1

J U D G M E N T

(The case has been heard through video conference)

This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation.

2. On 02.11.2008, when the claimant was riding his Bajaj M 80 motorcycle bearing registration No.TN-20-J-9580 along C.T.H Road, Nagavalliamman koil, Pattabiram, proceeding from East to West direction, a Cement tanker lorry bearing registration No.TN-01-Z-3521 proceeding on the road and on the same direction rash and negligently driven by its driver dashed the claimant riding the motorcycle M 80. In the said accident, the claimant's right leg ran over by the left front wheel of the lorry. The claimant was treated at Appollo First Med Hospital,

Chennai and discharged on 08.11.2008. His right leg above knee was amputated. At the time of accident the claimant was employed as milk vendor earning Rs.300/- per day. Hence sought for compensation of Rs.10,00,000/-.

3. The claim was resisted by the Insurance Company on the ground that the claim petition is bad for non-joinder of necessary parties namely, the owner of the two wheeler and its insurer. The driver of the offending lorry had no valid driving license and therefore for his violation of policy condition, the owner has to compensate the loss and the insurer need not indemnify the vehicle owner. The accident occurred due to negligence of the claimant who suddenly tried to over take the Santro car and dashed against the car and invited accident, stating that in any event the compensation claim is exorbitant, sought for exonerating the Insurance Company from liability.

4. Before the Tribunal 10 exhibits were marked. The claimant and one Dr.Thiyagarajan examined as PW.1 and PW.2.

5. The Tribunal on considering the evidence regarding the accident held that FIR has been lodged against the lorry driver and the police has also filed final report after full-fledged investigation. Therefore, the Insurance Company is liable to indemnify the lorry owner for causing the accident, since the Insurance Company has failed to prove that the driver of the lorry as well as the rider of the two wheeler (Claimant) had no valid driving license. Iif concluded that, there is no policy condition violation. After perusing the Ex.P-4 -Discharge summary and Ex.P-5 - Review report and Ex.P-7 - Photograph of the claimant held that due to amputation of right leg, the claimant has incurred permanent disability. The disability certificate given by PW.2 and marked as Ex.P-9 was considered for fixation of compensation for the disability. Since there was no evidence to show the income of the claimant or his business, Rs.150/- per day was taken as notional income and Rs.9,000/- awarded towards loss of earning during the treatment period. Besides under other non conventional head a sum of Rs.2,58,900/- was awarded with 7.5% interest from the date of petition till the date of realisation.

6. The learned counsel for the appellant would submit that, the case of amputation it is appropriate to apply multiplier, wherein, the Tribunal has erred in not applied multiplier method. The earning capacity of the claimant ,who was milk vendor at that time and earning Rs.300/- per day was not considered by the Tribunal. It has fixed the notional income of Rs.150/- per day. Towards pain and sufferings, Transport and Extra nourishment, the compensation awarded by the Tribunal is for low the fair compensation. Since the claimant has lost his

leg at the age of 32 years, the loss of amenities and the pain and sufferings should be adequately compensated.

7. The learned counsel for the 2nd respondent/Insurance Company submitted that the claimant had not produced his driving license in spite of taking specific plea that he had no driving license and has attributed to the accident. The disability incurred by him due to amputation of his leg assessed as 70% and Rs.1,40,000/- has been awarded, besides Rs.9,000/- for the loss of earning during the treatment period. Therefore, the learned counsel would contend that there is no ground to interfere the Tribunal award.

8. From the FIR, Sketch and charge sheet which are marked as Ex.P-1 to Ex.P-3, the Tribunal has held that the accident occurred due to negligence of the lorry driver. Since there is no contra evidence in support of the respondents plea attributing negligence on the part of the claimant, the finding of the Tribunal has to be confirmed. Though the insurance policy issued by the 2nd respondent not marked, the non production of insurance policy has not been seriously questioned by the 2nd respondent. Regarding its liability no appeal filed challenging the award on the grounds of no insurance coverage.

9. While considering the quantum of compensation, the Tribunal has awarded Rs.1,40,000/- towards 70% disability in case of amputation of leg up to knee level. The total permanent disability as per the schedule is 70%. Doctor in his disability certificate Ex.P-9 has clearly certified that the claimant suffers amputation of right leg up to knee and therefore it has caused 70% disability. The claimant has now by surgery, has fixed artificial leg to mitigate his disability. However being a total permanent disability living with amputation of leg, it is appropriate to apply multiplier method. Since the claimant has not produced any documents to prove income the Tribunal has fixed monthly income at Rs.3,000/- and has awarded Rs.9,000/- for the loss of income during treatment period. In the year 2008, the average income of unskilled person usually assessed as Rs.4,500/- per month, to the said amount Rs.1,800/- is added for future prospects. Accordingly, the award of the Tribunal is modified as below:-

S. No.	Award under various heads	Award of this Court
1	Loss of earning capacity (Rs.4,500+1,800x70/100x16x12)	Rs.8,46,720/-
2	For pain and sufferings	Rs.15,000/-

S. No.	Award under various heads	Award of this Court
3	Extra Nourishment	Rs.5,000/-
4	Transportation	Rs.5,000/-
5	Medical bills	Rs.84,900/-
6	Loss of earning during treatment period.	Rs.9,000/-
	Total	Rs.9,56,620/-

10. The Insurance Company is directed to deposit the modified award amount with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit within a period of eight weeks from the date to receipt of copy of this judgment. The claimant is permitted to withdraw the same on appropriate petition.

11. Accordingly, this Civil Miscellaneous Appeal is Allowed and the award of the Tribunal is set aside. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To
1.Motor Accidents Claims Tribunal,
The Sub Court Judge,
Thiruttani.

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

+1 cc to M/s.A.Dhiraviyanathan, Advocate Sr.No. 39758
+1 cc to M/s.Anand and suryas , Advocate Sr.No. 39518

C.M.A.No.718 of 2015

RR(CO)
RMP(08/04/2021)