

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1973 of 2016

Poongundran

.. Appellant/Claimant

Vs.

1.A.Karuppusamy

2.The National Insurance Company Limited,
1st Floor, Karthikaya Complex,
No.403, B-10, Mettur Main Road,
Bhavani - 638 302. .. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.12.2014 made in M.C.O.P.No.78 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai.

For Appellant : Mr.P.Parthi Kannan
for Mr.K.Kaithamalaikumaran
For R1 : No appearance
For R2 : Mr.R.Sunilkumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company and for enhancement of compensation granted by the award dated 16.12.2014 made in M.C.O.P.No.78 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai.

2.The appellant is the claimant in M.C.O.P.No.78 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai. He filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.11.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Minidor Auto

belonging to the 1st respondent and directed the 1st respondent-owner of the vehicle to pay a sum of Rs.1,22,449/- as compensation to the appellant/claimant and dismissed the claim petition as against the 2nd respondent-Insurance Company.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company and for enhancement of compensation, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the Tribunal erred in dismissing the claim petition as against the 2nd respondent-Insurance Company on the ground that the appellant herein is a gratuitous passenger at the time of accident, whereas, the appellant travelled as a coolie for loading and unloading of yarn. The policy issued by the 2nd respondent-Insurance Company covers driver plus 2 persons. The appellant having been travelled as a loadman is covered under the policy issued by the 2nd respondent-Insurance Company. The appellant as P.W.2 has deposed that he travelled in the Minidor Auto as Coolie and no contra evidence was let in by the 2nd respondent-Insurance Company to disprove the said contention. The Tribunal ought to have directed the 2nd respondent-Insurance Company to pay the compensation as there was valid Insurance policy. The Tribunal erred in granting lesser compensation of Rs.1,22,449/- against the claim of Rs.10,00,000/-. The total amounts awarded by the Tribunal under different heads are meagre and prayed for setting aside the portion of the award dismissing the claim petition against the 2nd respondent and for a direction to the 2nd respondent to pay the compensation and for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the F.I.R. was registered based on the complaint given by the appellant. In the complaint, the appellant has not stated that he travelled as coolie but has stated that he accompanied his friend Ilango in Minidor Auto. The Tribunal considering the F.I.R. has rightly held that appellant was a gratuitous passenger and dismissed the claim petition as against the 2nd respondent-Insurance Company. The total compensation awarded by the Tribunal is not meagre and prayed for dismissal of the appeal.

7.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.

8.It is the contention of the appellant that he is self employed as Bus Conductor as well as doing Agricultural work and was earning a sum of Rs.10,000/- per month. He further stated

that on the date of accident, he travelled along with one Ilango after loading the Yarn bags in Jai Vinayaha Proceeding Mill, they were proceeding on the Salem - Coimbatore Main Road. While they were nearing New Water Pump House at Vavikadai, the driver of the Minidor Auto drove the same in a rash and negligent manner and dashed against the backside of the ongoing lorry. The appellant as P.W.2 has deposed to that effect. Before the Tribunal, the 1st respondent remained exparte and the 2nd respondent-Insurance Company did not let in any contra evidence to disprove the contention of the appellant that he travelled as loadman and after loading Yarn bags in Jai Vinayaha Proceeding Mill, while he was proceeding on the Salem - Coimbatore Main Road, the accident has occurred due to rash and negligent driving by the driver of the Minidor Auto belonging to the 1st respondent. The Tribunal without properly appreciating the pleadings and evidence of appellant as P.W.2, erroneously held that the appellant travelled as gratuitous passenger relying on the contents of F.I.R., where the appellant has stated that he accompanied his friend Ilango.

9. From the award of the Tribunal, it is seen that the F.I.R. was registered based on the oral complaint. From the contents of the F.I.R., it cannot be presumed that appellant travelled as gratuitous passenger. Further the contents of the F.I.R. is not the basis for fixing negligence or to come to a conclusion in what capacity the victim or the deceased travelled in the vehicle at the time of accident. In the present case, the appellant has specifically pleaded that he travelled as loadman and deposed as P.W.2 to that effect. It is well settled that the Tribunal has to consider the pleadings, materials on record and evidence let in before it independently to come to a conclusion. From the above pleadings and evidence of appellant, it is clear that the appellant travelled as loadman accompanying his friend Ilango, who died in the accident on the same day. In view of the above findings of this case by this Court, the award of the Tribunal dismissing the claim petition as against the 2nd respondent-Insurance Company is set aside. The 2nd respondent-Insurance Company has not denied the Insurance Policy of the offending vehicle at the time of accident. In view of the same, the 2nd respondent-Insurance Company is liable to pay the compensation to the appellant.

10. As far as quantum of compensation is concerned, it is the contention of the appellant that he is working as a Conductor as well as a Loadman and was earning a sum of Rs.10,000/- per month. The appellant failed to prove the said contention. The Tribunal without fixing any notional income, awarded a sum of Rs.30,000/- towards loss of income, which is not meagre. P.W.3/Doctor assessed that the appellant suffered 22% disability and the Tribunal has awarded a sum of Rs.44,000/-

for 22% disability by fixing Rs.2,000/- per percentage of disability. The accident occurred in the year 2011 and the compensation awarded by the Tribunal towards disability is meagre. The appellant is entitled to compensation for disability by fixing Rs.3,000/- per percentage of disability. Thus, the amount awarded by the Tribunal towards disability is modified to Rs.66,000/- [Rs.3,000/- X 22% of disability]. The appellant has taken treatment in the hospital as in-patient from 14.12.2011 to 17.12.2011 and the Tribunal has not awarded any amount towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. The Tribunal has not awarded any amount towards loss of amenities and damage to clothes. A sum of Rs.10,000/- and Rs.2,000/- respectively are awarded towards loss of amenities and damage to clothes. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, pain and sufferings and loss of income 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	44,000/-	66,000/-	Enhanced
2.	Loss of income	30,000/-	30,000/-	Confirmed
3.	Pain and sufferings	25,000/-	25,000/-	Confirmed
4.	Extra nourishment	10,000/-	10,000/-	Confirmed
5.	Medical expenses	3,449/-	3,449/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Attendant charges	-	10,000/-	Granted
8.	Loss of amenities	-	10,000/-	Granted
9.	Damage to clothes	-	2,000/-	Granted
	Total	Rs.1,22,449/-	Rs.1,66,449/-	enhanced by Rs.44,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,22,449/- is hereby enhanced to Rs.1,66,449/- together

with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the 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.78 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai. 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 Minidor Auto is permitted to withdraw the award amount, if any lying in the deposit to the credit of M.C.O.P.No.78 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Court, Perundurai, if the award amount has already been deposited by him. No costs.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

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

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

+1 cc to Mr.S.Kaithamalaikumar,advocate,sr.7111

+1 cc to Mr.R.Sunilkumar, Advocate,sr.7247

rt(co)
krd 4/1

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