



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3552 of 2013

P.Aravind

.. Appellant/Petitioner

Vs.

1.R.Prema Mishra

2.ICICI Lombard General Insurance Co. Ltd.
Chotabhai centre, 3rd floor
140, Nungambakkam high road
Chennai-600 034.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2012 made in M.C.O.P.No.1561 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For R2 : Mrs.R.Sreevidhya

R1 : Exparte

J U D G M E N T

The matter is heard through "Video-Conferencing".

The Civil Miscellaneous Appeal is 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 28.09.2012 made in M.C.O.P.No.1561 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.1561 of 2012 on the file of Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the said claim petition claiming a sum



9. The learned counsel appearing for the appellant contended that the Tribunal erred in fixing liability only on the 1st respondent, owner of the vehicle. The Tribunal wrongly interpreted the evidence of R.W.1, the Legal Manager of the 2nd respondent. The Tribunal failed to see that R.W.1 admitted in the cross-examination that there is no proof for having sent notice with regard to dishonour of cheque and cancellation of policy to the 1st respondent, owner of the vehicle and concerned R.T.O. The Tribunal failed to see that Ex.R1/cheque was issued by one Ramji Mishra, who is not the owner of the vehicle. In the absence of proof with regard to intimation of cancellation of policy to the owner of the vehicle and concerned R.T.O., the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay the compensation. In the accident, the appellant sustained severe injuries in his right hip, right leg, comminuted fracture, medial tibia condyle and fracture of fibula. The appellant has taken treatment in the hospital as in-patient for nearly one month. The amounts awarded by the Tribunal towards loss of income, pain and suffering, transportation, extra nourishment and medical expenses are meagre. The Tribunal has not awarded any compensation towards damage to clothes and loss of earning power and prayed for setting aside the award of the Tribunal dismissing the claim petition as against the 2nd respondent and for enhancement of compensation.

10. Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the cheque issued for premium for the policy was returned by the drawee bank. On return of cheque, policy was canceled and the same was intimated to the 1st respondent, owner of the vehicle and concerned RTO. The 2nd respondent proved the same by examining Legal Manager of the 2nd respondent as R.W.1 and marked Exs.R1 to R4. The Tribunal appreciating the evidence of R.W.1 and Exs.R1 to R4 has rightly dismissed the claim petition as against the 2nd respondent. The 2nd respondent relied on the judgment of the Hon'ble Apex Court reported in 2012 (5) SCC 234 (United India Insurance Company Ltd. vs. K.Laxamma and others) and submitted that if this Court comes to the conclusion that the 2nd respondent is liable to pay compensation, prayed for ordering pay and recovery.

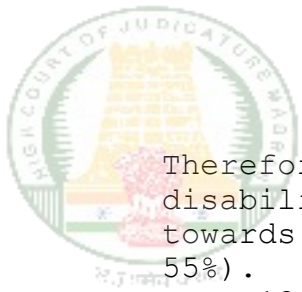
11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent/Insurance Company and perused the entire materials on record.

12. It is the contention of the appellant that the accident has occurred due to negligence on the part of the driver of the vehicle belonging to the 1st respondent and the appellant sustained injuries. The Tribunal considering the evidence of



the appellant as P.W.1 and Ex.P1/F.I.R., held that the accident has occurred due to rash and negligent driving by the driver of the vehicle belonging to the 1st respondent. It is the contention of the 2nd respondent/Insurance Company that the cheque issued for premium for the policy was returned by drawee bank and therefore, the policy was cancelled. To prove the same, the 2nd respondent examined the Legal Manager as R.W.1 and marked Exs.R1 to R4. From the evidence of R.W.1, it is seen that R.W.1 has admitted in the cross-examination that they have not filed any proof for having sent the intimation about the dishonour of cheque and cancellation of policy to the first respondent as well as the concerned RTO. According to R.W.1, the policy will automatically get cancelled, when the cheque returns as dishonoured. From the evidence of R.W.1, it is clear that the 2nd respondent has not proved the dishonour of cheque and cancellation of policy was intimated to the 1st respondent, owner of the vehicle and concerned RTO before the date of accident. Unless the intimation about the cancellation is served on the owner of the vehicle and concerned RTO before the date of accident, the policy will be in force for the entire period. The Tribunal without properly appreciating the evidence of R.W.1 and admission of R.W.1 that they have not produced any material to prove that notice was issued and served on the 1st respondent and concerned RTO, erroneously dismissed the claim petition as against the 2nd respondent/Insurance Company. In view of the above, the award of the Tribunal dismissing the claim petition as against the 2nd respondent 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. In any event, the learned counsel appearing for the 2nd respondent prayed for ordering pay and recovery in view of the dishonour of cheque paid towards premium and relied on the judgment, referred to above. As per the ratio laid down in the judgment reported in 2012 5 SCC 234 cited supra the 2nd respondent/Insurance Company is entitled to recover the compensation paid to the appellant from the 1st respondent, owner of the vehicle.

13.As far as quantum of compensation is concerned, it is the contention of the appellant that in the accident, he suffered severe injuries in his right hip, right leg, comminuted fracture, medial tibia condyle and fracture of fibula. P.W.2/Doctor examined the appellant and certified that the appellant has suffered 55% partial and permanent disability. The appellant marked Ex.P9 - disability certificate to prove the same. The Tribunal reduced the disability to 50% on the ground that the disability assessed by P.W.2/Doctor is on the higher side and awarded a sum of Rs.1,00,000/- towards disability at the rate of Rs.2,000/- per percentage of disability. The 2nd respondent did not let in any contra evidence to disprove the evidence of P.W.2/Doctor and Ex.P9 - disability certificate.



Therefore, the appellant is entitled to compensation for 55% disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,10,000/- (Rs.2,000/- X 55%).

13(i).According to the appellant, he was working as an Executive in Airtel Company, Chennai and was earning a sum of Rs.8,000/- per month. The Tribunal accepting the same, fixed a sum of Rs.8,000/- as monthly income of the appellant and awarded a sum of Rs.48,000/- (Rs.8,000/- X 6) towards loss of income for a period of six months. Due to the injuries and disability, the appellant would not have attended the work atleast for a period of 12 months. Thus, the compensation awarded by the Tribunal towards loss of income is modified to Rs.96,000/- (Rs.8,000/- X 12).

13(ii).The appellant has contended that he has taken treatment as in-patient in Thiravium Orthopedic Hospital, Nagercoil, from 01.02.2008 to 13.02.2008 for 14 days. The Tribunal awarded Rs.5,000/- each towards transportation, extra nourishment and attendant charges, which are meagre. Considering the nature of injuries, disability and period of treatment taken by the appellant, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are hereby enhanced to Rs.10,000/- each. The Tribunal has not awarded any amount towards damage to clothes and hence, a sum of Rs.2,000/- is awarded towards damage to clothes. 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.	Loss of income	48,000	96,000	Enhanced
2.	Transportation	5,000	10,000	Enhanced
3.	Extra nourishment	5,000	10,000	Enhanced
4.	Medical expenses	67,000	67,000	Confirmed
5.	Attendant charges	5,000	10,000	Enhanced



WEB COPY

6.	Loss of amenities and mental agony	20,000	20,000	Confirmed
7.	Pain and suffering	20,000	20,000	Confirmed
8.	Disability	1,00,000	1,10,000	Enhanced
9.	Damage to clothes	-	2,000	Granted
	Total	2,70,000	3,45,000	Enhanced by Rs.75,000/-

14. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,70,000/- is hereby enhanced to Rs.3,45,000/- 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, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 1st respondent, owner of the vehicle. 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

//True copy//

Sub Assistant Registrar

kj

To

1. II Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

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



+1cc to Mr.K.V.Muthu Visakan, Advocate SR.No.36787

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.36820

C.M.A.No.3552 of 2013

WEB COPY

PM(CO)

GMV (26/08/2021)