IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2020

CORAM:

THE HONOURABLE Mrs Justice V.BHAVANI SUBBAROYAN

C.M.A.No.3627 of 2013

Prakash ...Appellant/Petitioner/Claimant

Vs.

1.Ramani .... 1st Respondent/Owner of the Vehicle

2.The Divisional Manager,
Cholamandalam MS General Insurance Co. Ltd.,
Dare House, II Floor,
New No.2, Old No.234,
NSC Bose Road,
Chennai-600 001. ...2nd Respondents/2nd Respondetns

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and award of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvannamalai in M.A.C.T.O.P.No.166 of 2009 dated 07.08.2012.

For Appellant : Mrs.Subdara for M/s.Malar

For Respondent-1 : No Appearance

For Respondent-2 : Mr.N.Vijayaraghavan

JUDGMENT

The instant appeal has been filed by the claimant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Tiruvannamalai in M.A.C.T.O.P.No.166 of 2009 dated 07.08.2012.

2.The core facts which leads to the filing of the instant appeal is as follows:

a)On 06.09.2008, at about 12' 0 clock, Tata Vehicle 407 bearing registration No.TN-46-1600 owned by the first respondent herein which came from Kangeyan to Tarapattu due to the rash and negligent driving of the driver of the vehicle met with an accident near Tarapattu Water Tank causing injuries to the appellant as well as 20 others. The appellant herein suffered

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fractures on his left shoulder and forearm. A criminal case has been filed by the Sattanur Dam Police in Cr.No.93 of 2008 under Sections 279, 337, 338.

b)On analysing the oral and documentary evidences and materials available on record, the Motor Accident Claims Tribunal, (Chief Judicial Magistrate Court), Tiruvannamalai passed the judgment and decree on 07.08.2012, directing the first respondent who is the owner of the vehicle to pay the appellant a sum of Rs.1,20,000/- together with interest at 7.5% from the date of claim till date of realization, exonerating the liability fasten on the Insurance Company. The details of the award passed by the Tribunal is as follows:

Heads	Amount awarded
Pain & Sufferings	Rs.20,000/-
Transportation	Rs.2,000/-
Extra Nourishment	Rs.3,000/-
Permanent Disability	Rs.90,000
Loss of Amenities	Rs.5,000/-
Total	Rs.1,20,000/-

3.Aggrieved by the quantum of compensation awarded by the Tribunal and fasten the liability on the first respondent, the instant appeal has been filed by the appellant seeking enhancement of compensation.

4.Heard Mrs.Subadara, learned counsel for the appellant and Mr.N.Vijayaraghavan, learned counsel for the second respondent.

5.According to the learned Counsel for the appellant, the Tribunal under the impugned Award has failed to consider the age and income of the appellant/claimant at the time of accident. Though claimant has suffered fractures on his left shoulder and forearm and also sustained multiple injuries, without proper appreciation of the evidence had reduced the disability from 60% to 45%.

6.The learned counsel further submitted that no amount has been awarded for medical expenses and attendant benefits. She also contended that the compensation awarded under the various heads are meagre and the same needs enhancement.

7.In support of her contentions, the learned counsel relied upon a decision of the Hon'ble Supreme Court in Shivaraj V. Rajendra & another reported in 2018 (2) TN MAC 273 (SC)and contended that insurance company shall be directed to pay the compensation award and to recover the same from the owner of the vehicle as per the settled proposition in Shivaraj's case.

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8.Per contra, the learned counsel for the second respondent submitted that the appellant has not proved that he has travelled as a cleaner in the alleged vehicle. He contended that 35 persons have travelled in the goods vehicle which is in violation to the policy. He further submitted that their liability has been absolved by the Tribunal and prayed this Court to exonerate them from the liability.

9.I have given careful consideration to the submissions made by the respective counsels.

10.Before adverting to the submissions made by the respective counsels on the facts of the case, the legal position enunciated by the Hon'ble Supreme Court in Shivaraj V. Rajendra & another reported in 2018 (2) TN MAC 273 (SC), was that claimant travelled as a loader and insurance policy covered risk of 1 + 4, held insurer liable and High Court in appeal holding that tractor insured only for agriculture purpose and not for carrying goods and presence of trailer not shown in any of the documents and also that tractor could accommodate only one person i.e., driver and therefore, since claimant travelled in tractor as a passenger in breach of policy condition, insurer is not liable to indemnify owner and conclusion arrived by the High court as unexceptional and directed the insurer to pay and recover in consonance with consistent views taken in National Insurance Co. Ltd., V. Swarn Singh & others [2004 (3) SCC 297; Mangla Ram V. Oriental Insurance Co. Ltd., [2018 (1) TNMAC 681 (SC); Rani & others V. National Insurance Company Ltd., & others [2018 (9) Scale 310] and Manuara Khatun and others V. Rajesh Kumar Singh and others [2017 (4) SCC 796], which was overruled in view of Larger Bench decisions in New India Assurance Co. Ltd., V. Asha Rani & others and National Insurance Co. Ltd., V. Baljit Kaur and others by the Hon'ble Division Bench of this Court in Bharati AXA General Insurance Co. Ltd., rep. by its Manager, 1st Floor, Fems Icon, Survey No.28, Doddannakundi, K.R.Puram Obli, Bangalore-560 037 V. Aandi, Rajendran & P.Saravanan reported in 2018 (2) TNMAC 731 (DB). In the aforesaid decision, this Court has held that no mandatory requirement for insurer to cover persons travelling as passengers in Goods vehicle, unless such passenger is owner or agents of owner of goods accompanying goods in vehicle. In absence of any statutory requirement to cover liability in respect of passenger in Goods Vehicle, principle of Pay and Recover as statutorily recognized in Section 149(4) & (5), is not applicable ipso facto as held by the Hon'ble Apex Court in Shivaraj's case (stated supra) in view of the Larger Bench decisions (stated supra). The relevant portions of the said judgment are extracted as follows:

> "47. However, the Hon'ble Supreme Court invoked the power under Article 142 taking note

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of the peculiar facts of the case and directed the Insurance Company to pay the compensation with liberty to recover. Therefore, in our considered opinion the judgment in National Insurance Company Ltd., Vs. Saju P. Paul reported in 2013 (2) SCC 41 cannot also be taken as a precedent, as contended by Mr.N.Vijayaraghavan, to impose the obligation to indemnify the insured in respect of death or bodily injury caused to the persons who are unauthorized passengers in a goods vehicle.

48. Coming to the latest judgment viz., Shivaraj Vs. Rajendra and another dated 05.09.2018, made in Civil Appeal Nos.8278 and 8279 of 2018, there again the Hon'ble Supreme Court affirmed the conclusion of the High Court to the effect that the Insurance Company was not liable for the loss or injuries suffered by the appellant or to indemnify the owner of the tractor. However, the Hon'ble Supreme Court taking note of the peculiar circumstances of the case directed the Insurance Company to pay the compensation with liberty to recover the same. Unfortunately, the decisions of the larger bench in New India Assurance Company Vs. Asha Rani and others or National Insurance Company Ltd., Vs. Baljit Kaur and others were not brought to the notice of the two Judge Bench which decided Shivaraj Vs. Rajendra and another referred to supra.

49. We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.

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50. In fact, we find that in none of the judgments referred to viz., National Insurance Co. Ltd. Vs. Swarn Singh & Ors. reported in (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd. reported in (2018) 5 SCC 656, Rani & Ors. Vs. National Insurance Co. Ltd. & Ors. reported in 2018 (9) Scale 310 and Manuara Khatun and Others Vs. Rajesh Kumar

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Singh And Others reported in (2017) 4 SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized passenger in the goods vehicle did arise for consideration. We are therefore of the considered opinion that the judgment of the two Judge bench in Shivaraj Vs. Rajendra and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the compensation even in respect of an unauthorized passenger, in a goods vehicle, in the light of categorical pronouncement of larger bench of the Hon'ble Supreme Court in New India Assurance Company Vs. Asha Rani and others and National Insurance Company Ltd., Vs. Baljit Kaur and others referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the compensation and giving it the liberty to recover the same from the owner.

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India."

The aforesaid extract is self explanatory to the effect that the Insurance Company is not liable to pay the compensation.

11.This Court after having considered the materials available on record, having examined the impugned award and having heard the submissions of the respective Counsels and also in the light of the decisions of the Larger Bench of the Hon'ble Apex Court, is of the view that the compensation awarded by the Tribunal is just and reasonable and hence, not inclined to interfere with the same. However, taking into consideration of the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Shethi and Others reported in 2017 (6) SCC 680, this Court is of the considered opinion that the compensation has to be enhanced for extra nourishment and accordingly, the same has been enhanced to Rs.5000/-. It is brought to the notice of this Court that no amount has been awarded for attendant benefits. Since the petitioner has suffered fractures in his left shoulder and left

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forearm, a sum of Rs.3000/- has been granted under this head. Accordingly, the amount awarded by the Tribunal under extra nourishment is enhanced from Rs.3000/- to Rs.5000/- and a sum of Rs.3000/- is awarded towards attendant benefits. As per the judgment and award of the Tribunal, the insured/first respondent herein alone is liable to pay the enhanced amount as the Insurance Company is absolved from the liability. Thus, the compensation awarded by the Tribunal is enhanced to a sum of Rs.1,25,000/- from Rs.1,20,000/-. The details of the modified award amount is as follows:-

Heads	Amount awarded by the Tribunal	Amount Awarded by this Court	Award confirmed or enhanced or granted
Pain & Sufferings	Rs.20,000/-	Rs.20,000/-	confirmed
Transportation	Rs.2,000/-	Rs.2,000/-	confirmed
Extra Nourishment	Rs.3,000/-	Rs.5,000/-	enhanced
Permanent Disability	Rs.90,000	Rs.90,000/-	confirmed
Loss of Amenities	Rs.5,000/-	Rs.5,000/-	confirmed
Attendant Benefits	---	Rs.3,000/-	granted
Total	Rs.1,20,000/-	Rs.1,25,000/-	Enhanced by Rs.5,000/-

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12.In the result, the Civil Miscellaneous Appeal is partly allowed and the judgment and decree dated 07.08.2012, passed by the learned Chief Judicial Magistrate (MACT), Tiruvannamalai in M.A.C.T.O.P.No.166 of 2009, is hereby enhanced from Rs.1,20,000/- to Rs.1,25,000/-. The first respondent herein is directed to deposit the enhanced amount to the credit of M.A.C.T.O.P.No.166 of 2009, on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court) Tiruvannamalai, together with interest 7.5% per annum from the date of claim till the date of deposit within a period of one

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week from the date of receipt of this order. On such deposit being made, the appellant is permitted to withdraw the said sum by filing an appropriate application. No costs.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

DP

To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate),
Tiruvannamalai.

Copy To

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 4890
+1cc to Mr.M.Malar, Advocate, S.R.No. 4153

C.M.A.No.3627 of 2013

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