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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.678 of 2020

S.Sivakumar

.. Appellant/Petitioner

Vs.

1.S.Karthik

2.United India Insurance Co. Ltd.,

Motor Third Party Hub,

Silingi Building,

4th Floor, No.134, Greams Road,

Chennai 6.

.. Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.11.2018 made in M.C.O.P.No.1079 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.S.Arunkumar for R2

J U D G M E N T

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 30.11.2018 made in M.C.O.P.No.1079 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.



2.The appellant is the claimant in M.C.O.P.No.1079 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.13,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.02.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No. TN 20 AT 6644 belonging to the 1st respondent and directed the 1st respondent, owner of the motorcycle to pay a sum of Rs.7,07,000/- as compensation to the appellant 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 as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant/claimant contended that the Tribunal dismissed the claim petition as against the 2nd respondent/Insurance Company holding that the rider of the motorcycle belonging to the 1st respondent did not possess valid driving license at the time of accident. In the absence of driving license, the Tribunal ought to have directed the 2nd respondent/Insurance Company to pay compensation to the claimant at the first instance and recover the same from the owner of the vehicle. He further contended that the appellant sustained fracture of the frontal bone involving right orbital plate, right zygomatic arc, right greater wing of sphenoid and sustained severe injuries all over the body. The appellant examined P.W.2/Doctor to prove the nature of injuries and disability suffered by him. The Tribunal reduced the percentage of disability from 75% to 30% and awarded a sum of Rs.90,000/- towards disability. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that the rider of the offending vehicle did not possess driving license at the time of accident and hence, the 2nd respondent is not liable to pay any compensation to the appellant. The Tribunal has rightly appreciated the above facts in proper perspective and dismissed the claim petition as against the 2nd respondent/Insurance Company. The Tribunal after considering all the materials available on record in proper perspective, has awarded just compensation. The appellant has not made out any case for



enhancement of compensation 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 all the materials available on record.

8. From the materials available on record, it is seen that the accident has occurred due to rash and negligent riding by the rider of the motorcycle bearing Registration No. TN 20 AT 6644 belonging to the 1st respondent. At the time of accident, the rider of the motorcycle did not possess driving license. It is well settled law that for not possessing driving license by the rider of the motorcycle, the Insurance Company cannot be exonerated. The claimant who is a third party should not suffer and they must enjoy the fruits of the award passed by the Tribunal. In such circumstances, the Insurance Company must be directed to pay the compensation to the claimant at the first instance and recover the same from the owner of the vehicle. By applying the said principle of law to the present case, the portion of the award dismissing the claim petition as against the 2nd respondent/Insurance Company on the ground that the rider of the motorcycle belonging to the 1st respondent did not possess driving licence, is set aside and the 2nd respondent/Insurance Company is directed to pay the compensation to the appellant at the first instance and later on, recover the same from the 1st respondent, owner of the vehicle.

9. As far as quantum of compensation is concerned, it is the contention of the appellant that he suffered fracture in the skull, facial bone, contusion over right eye and multiple injuries all over the body. The appellant has produced Ex.P7/disability certificate issued by Doctor to show that he suffered 75% disability. The respondents did not let in any evidence to disprove the evidence of P.W.2-Doctor and disability certificate but the Tribunal reduced the percentage of disability to 30%, on the ground that Doctor who issued disability certificate has not treated the appellant. The Tribunal has fixed the disability at 30% and awarded Rs.90,000/- towards disability at the rate of Rs.3,000/- per percentage. The reason given by the Tribunal for reducing the percentage of disability is not correct. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the appellant is entitled to compensation for 50% disability. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation by applying multiplier method. The amount awarded by the Tribunal per percentage of disability is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2019 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another),



fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident has occurred on 08.02.2014. By fixing Rs.4,000/- per percentage of disability, the amount awarded by the Tribunal towards disability is enhanced to Rs.2,00,000/- (Rs.4,000/- X 50%). The amounts granted by the Tribunal under the other heads are just and reasonable and hence, they 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	90,000	2,00,000	Enhanced
2.	Medical expenses	4,22,000	4,22,000	Confirmed
3.	Pain & sufferings	1,00,000	1,00,000	Confirmed
4.	Extra nourishment	25,000	25,000	Confirmed
5.	Transportation	20,000	20,000	Confirmed
6.	Future Medical Expenses	50,000	50,000	Confirmed
	Total	Rs.7,07,000/-	Rs.8,17,000/-	Enhanced by Rs.1,10,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,07,000/- is hereby enhanced to Rs.8,17,000/- 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 costs, 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. If the first respondent had amount to the credit of M.C.O.P.No.1079



of 2014, the second respondent is directed to deposit the balance amount now awarded by this Court. 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vkr

To

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

Copy to
The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.S.Arunkumar, Advocate (SR No.16362)

+1cc to Mr.R.Nalliyappan, Advocate (SR No.16130)

C.M.A.No.678 of 2020

PR (28/07/2021)