

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1044 of 2014

Manoharan

... Appellant/Petitioner

Vs.

1. Punithavathy

2. Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. by its Branch Manager,
127, 2nd Floor, Natesan Towers,
Natesan Nagar, Ellai Pillai Savadi,
Pondicherry. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 10.04.2013 made in M.C.O.P.No.35 of 2012 on the file of the Principal Sub Court, Principal Sub Judge (Motor Accidents Claims Tribunal), Mayiladuthurai.

For Appellant : Mr.Gopi
for M/s.Royan Law Associates

For R2 : Mr.E.Rajadurai
for Mr.M.B.Raghavan

R1 : Not ready in notice

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 10.04.2013 made in M.C.O.P.No.35 of 2012 on the file of the Principal Sub Court, Principal Sub Judge (Motor Accidents Claims Tribunal), Mayiladuthurai.

2. The appellant is the claimant in M.C.O.P.No.35 of 2012 on the file of the Principal Sub Court, Principal Sub Judge (Motor Accidents Claims Tribunal), Mayiladuthurai. He filed the 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 11.06.2011.

3. The case of the appellant is that on 11.06.2011, while he was travelling as a load man in the first respondent's vehicle bearing Registration No.TN-51-P-4090, the vehicle was capsized into the crater near Anna Salai, Pazhayar. At the time of accident, he was aged about 43 years and working as load man and was earning Rs.12,000/- per month. In spite of treatment, the petitioner becomes permanently disabled and due to the injuries sustained in the accident, he could not lift his hand and work as before. His contention is that the driver of the said vehicle drove the vehicle rashly and negligently, as a result of which, he sustained injuries all over his body. According to the appellant/claimant, the rash and negligent driving of the driver of the vehicle bearing Registration No. TN-51-P-4090 was the cause of the accident and that since the said vehicle was insured with the second respondent-Royal Sundaram Alliance Insurance Co. Ltd., Pondicherry, the first and the second respondent are jointly and severally liable to pay compensation to him. Hence the appellant filed a petition before the Principal Sub Court, Principal Sub Judge (Motor Accidents Claims Tribunal), Mayiladuthurai, claiming a sum of Rs.10,00,000/- as compensation from the respondents.

4. Denying the allegations, the second respondent-Insurance Company has filed a counter affidavit stating that the accident was purely due to the rash and negligent driving of the first respondent's vehicle. Further, it has been stated that the first respondent was not having valid driving license at the time of accident and the petitioner and some others were travelled in the said vehicle at the time of accident. Moreover, the vehicle TN-51-P-4090 is a goods carrying vehicle, which is not meant for travelling passengers. Further, it has been stated that the alleged age, income and nature of injuries are not true and the amount of compensation claimed is baseless and exorbitant.

5. During the trial before the Tribunal, on the side of the petitioner, PW1 to PW4 were marked and the petitioner himself was examined as PW1 and marked certain documents as Exs.P1 to P15. On the side of the respondents one Mr.Bargavan was examined as RW1 and marked document as Ex.R1.

6. The learned Principal Subordinate Judge, Mayiladuthurai after analysing the evidence on record, awarded compensation of Rs.1,16,304/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the appellant. However, the tribunal held that since the appellant/claimant was a gratuitous passenger in the vehicle bearing Registration No. TN 51 P 4090, the second respondent/Insurance Company is not liable to pay the

compensation.

7. Not being satisfied with the amount awarded by the Tribunal, the petitioner/appellant herein has come out with the present appeal seeking enhancement of compensation.

8. Heard Mr.Gopi, learned counsel appearing for the appellant/claimant and Mr.E.Rajadurai, learned counsel appearing for the second respondent.

9. From the materials on record, it is seen that PW2/Doctor assessed that the appellant suffered 65% disability. Considering the nature of injury sustained by the appellant, the Tribunal has fixed the disability as 35% and awarded a sum of Rs.52,500/- (35 X 1,500). As per the settled principal of law and the various decisions of this Court and also considering the age and nature of injuries sustained by the appellant/claimant, this Court is inclined to fix the disability as 50% and enhance the amount to Rs.3,000/- per percentage of disability. If that yardstick is adopted, a sum of Rs.1,50,000/- (50 x 3,000) has to be awarded and it is awarded accordingly. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, which is found to be very meager and hence the same is hereby enhanced to Rs.25,000/-. Consequently, the amounts towards Transport to Hospital & Extra nourishment and attender charges are enhanced to Rs.15,000/- and Rs.10,000/-, respectively. Moreover, it is observed that the appellant had marked the medical bills as Ex.P5, Ex.P6 & Ex.P13 to prove the expenses made for the treatment and only after considering the same, the Tribunal has awarded a sum of Rs.39,804/- towards Medical Expenses and the same is hereby confirmed. The Tribunal has not awarded any amount towards Loss of amenities. A sum of Rs.25,000/- is granted towards loss of amenities.

10. In view of the above observations made by this Court, the compensation awarded by the Tribunal is modified as follows :

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	52,500/-	1,50,000/-	Enhanced
2.	Pain and Sufferings	10,000/-	25,000/-	Enhanced
3.	Transport to Hospital & Extra Nourishment	10,000/-	15,000/-	Enhanced
4.	Attender Charges	4,000/-	10,000/-	Enhanced
5.	Medical Bills	39,804/-	39,804/-	Confirmed
6.	Loss of amenities	0	25,000/-	Awarded
	Total	Rs.1,16,304/-	Rs.2,64,804/-	enhanced amount Rs.1,48,500/-

11. As there is no evidence to show that the appellant was working as a load man by way of proper oral and documentary evidence and from the admission of the co-passengers, it is clear that the appellant has been travelled as an unauthorised passenger. The tribunal has correctly held that since the appellant/claimant was a gratuitous passenger in the vehicle bearing Registration No. TN 51 P 4090, the second respondent/Insurance Company is not liable to pay the compensation. Further, there is no oral or documentary evidence produced by the claimant to the effect that he has travelled in the capacity as passenger and not as unauthorised passenger/gratuitous passenger. Therefore, the total liability is fixed on the owner of the vehicle.

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,16,304/- is hereby enhanced to Rs.2,64,800/- together along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The first respondent/owner of the vehicle/Insured 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. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. If no amount is paid by the owner of the vehicle, the claimant is at liberty to proceed against them by initiating appropriate proceedings. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

rsi

To

1. Principal Sub Judge (Motor Accidents Claims Tribunal),
Principal Sub Court,
Mayiladuthurai.

+1CC to M/s.Royan Law Associates- SR. 8694.

+1CC to Mr. N.Vijaya Raghavan, Advocate- SR. 9155.

Copy to:

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

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C.M.A.No.1044 of 2014

KS (CO)

NRA (01/03/2021)

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