IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.08.2020
CORAM
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.Nos.154 & 2495 of 2014
and
M.P.No.1of 2014 in CMA No.154 of 2014

CMA.No.154 of 2014
M/s.Bharti AXA General Insurance Co. Ltd.,
'Metro Plaza', No.162, Anna Salai
Chennai-600 002. : Appellant/2nd Respondent

vs.

1.U.Manoj Kumar : 1st Respondent/Claimant

2.G.Murugan : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 as against the Final Award dated 10th day of July 2013, passed in M.C.O.P No.4043 of 2010, by the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mrs.C.Bhuvanasundari
For Respondents : Mr.K.Varadha Kamaraj -R1
R2 - Exparte

CMA.No.2495 of 2014

U.Manoj Kumar … Appellant/Claimant

.vs.

1.G.Murugan
2.Bharathi AXA General Insurance
Company Ltd.,
"Metro Plaza", No.162, Anna Salai
Chennai-2.
(The 1st Respondent was set exparte
before the lower Court and hence
notice may be dispensed with)
… Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment dated 10.07.2013 made in M.C.O.P No.4043 of 2010 on the file of the Motor Accident Claims Tribunal, (II Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj
For Respondents : M/s.C.Bhuvanasundari-R2
R1- Exparte

COMMON JUDGMENT
(These Appeals have been taken up for hearing through Video Conferencing)

CMA No.154 of 2014 has been filed by the Insurance Company challenging the finding given by the Tribunal under the impugned award that they are not liable to compensate the claim and they have also questioned the quantum of compensation awarded by the Tribunal. CMA No.2495 of 2014 has been filed by the claimant seeking enhancement of compensation under the impugned award.

2. The impugned award is dated 10.07.2013 passed by the Motor Accident Claims Tribunal (II Small Causes Court, Chennai) in MCOP.No.4043 of 2010.

3. Heard Ms.C.Bhuvanasundari, learned counsel for the appellant in C.M.A No.154 of 2014 and Mr.K.Varadha Kamaraj, learned counsel for the appellant in C.M.A No.2495 of 2014.

4. The owner of the vehicle was exparte both before the Tribunal as well as before this Court.

5. The first contention raised by the Appellant Insurance Company in CMA No.154 of 2014 is that the driver of the insured vehicle did not possess a valid driving license to drive a goods vehicle (insured vehicle) at the time of the accident and the second contention is that the quantum of compensation awarded to the Appellant in CMA No.2495 of 2014, who was the claimant before the Tribunal is excessive.

6. Admittedly, the insured goods vehicle is Tata 909 vehicle whose weight is 9600 kgs. The Motor Vehicles Act was amended in the year 2001 and after the said amendment, medium goods vehicle and heavy goods vehicle were all treated as Transport vehicles. The contention raised by the Appellant is that the insured vehicle namely, Tata 909 is more than 7500 kgs and therefore, the driver of the insured vehicle who was possessing only a LMV Transport vehicle license at the time of the accident which was marked as Ex.R1 did not possess a valid driving license to drive a medium goods vehicle like that of a Tata 909 vehicle which is insured with the Appellant.

7. The said contention raised by the Appellant has been duly considered in a judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited .vs. Annappa Irappa

Nesaria Alias Nesaragi and others, reported in (2008) 3 SCC 464, wherein the Hon'ble Supreme Court has held that subsequent to the amendment of the Motor Vehicles Act in the year 2001 which came into effect on 28.03.2001, nine types of goods vehicles classified prior to the amendment were merged under a single category, of Transport vehicle after the amendment. The Hon'ble Supreme Court has observed as follows:

> "19. "Light motor vehicle" is defined in Section 2 (21) and, therefore, in view of the provision, as then existed, it included a light transport vehicle. Form 6 provides for the manner in which the license is to be granted, the relevant portion whereof reads as under:
>
> "Authorisation to driver transport vehicle
> Number.....
> Date........
> Authorised to driver transport vehicle with effect from....
> Badge number.......
> Signature
> Designation of the licensing authority
> Name and designation of the authority who conducted the driving test".
>
> 20. From what has been noticed hereinbefore, it is evident that "transport vehicle" has now been substituted for "medium goods vehicle" and "heavy goods vehicle". The light motor vehicle continued, at the relevant point of time to cover both "light passenger carriage vehicle" and "light goods carriage vehicle". A driver who had a valid license to drive a light motor vehicle, therefore, was authorised to drive a light goods vehicle as well.
>
> 21. The amendments carried out in the Rules having a prospective operation, the license held by the driver of the vehicle in question cannot be said to be invalid in law".

8. The subject vehicle which was involved in the accident and insured with the Appellant in CMA No.154 of 2014 falls now under one of the said nine types of goods vehicles referred to by the Hon'ble Supreme Court. The said vehicle weighs 9600 kgs and falls under the category of Transport vehicle pursuant to the amendment of the Motor Vehicles Act in the year 2001 which came into effect on 28.03.2001.

9. Admittedly, in the case on hand, the claimant, who is the Appellant in CMA No.2495 of 2014 was holding a valid license to drive a Light Motor vehicle. The driving license was marked as

Ex.R1 before the Tribunal. A driver who had a valid license to drive a light motor vehicle was authorised to drive a light goods vehicle which in the instant case is a Tata 909 vehicle. In view of the same, the first contention raised by the Appellant in this appeal fails and accordingly, it is rejected by this Court.

10. Insofar as the second contention regarding the quantum of compensation is concerned, the Tribunal has awarded a compensation of Rs.8,17,000/- to the Appellant in CMA No.2495 of 2014, who was the claimant in MCOP No.4043 of 2010 as detailed hereunder:

Heads	Award Amount (Rs.)
Loss of Income for 4 months	24,000/-
Transportation charges	10,000/-
Extra nourishment	10,000/-
Loss of amenities of life, Social activities and Loss of Marriage prospects	50,000/-
Pain and Suffering	75,000/-
Loss of earning capacity	6,48,000/-
Total	8,17,000/-

11. Before the Tribunal, the claimant who sustained injuries as a result of an accident caused by a vehicle insured with the Appellant/Insurance Company in CMA No.154 of 2014, filed 11 documents which were marked as Ex.P1 to P11 and two witnesses were examined on his side namely, the claimant himself as PW1 and the Doctor, who examined the claimant as PW1. On the side of the Appellant Insurance Company, five documents were filed, which were marked as Ex.R1 to R5 and two witnesses were examined namely RW1, an RTO official and RW2, the official of the Insurance Company.

12. Due to the accident caused by the insured vehicle, the claimant had sustained injuries and he had to amputate his left leg below his knee. The nature of the injuries sustained by the claimant has also not been disputed by the Appellant Insurance Company before the Tribunal as seen from the evidence available on record. The Doctor - PW2 has assessed the disability of the claimant as 70% and the disability certificate has been marked as Ex.P11 before the Tribunal. Apart from the disability

certificate issued by PW2, the claimant has also filed another disability certificate which was marked as Ex.P7 which also reveals that the claimant has suffered 70% disability. However, the Tribunal under the impugned award has assessed the disability of the claimant at 50%. This Court has perused the materials and evidence available on record and particularly has examined the disability certificates Ex.P7 and Ex.P11. This Court is of the considered view that the assessment of the disability by the Tribunal of the claimant at 50% is a correct assessment.

13. The claimant was a cleaner in the insured vehicle at the time of the accident and in his claim petition had claimed that he was earning Rs.7,500/- per month. The year of the accident is 2010. However, the Tribunal has fixed the notional monthly income of the claimant only at Rs.6,000/- since no documentary evidence was produced by the claimant before the Tribunal to substantiate his claim that he was earning Rs.7,500/- per month. The Hon'ble Supreme Court in the case of Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Ltd., reported in 2014 ACJ 627, has assessed the notional monthly income of a vegetable vendor at Rs.6,500/- for an accident that had taken place in the year 2008. In the case on hand, the accident having taken place in the year 2010, if the same yardstick is applied, the notional monthly income of the claimant has also to be necessarily assessed not less than Rs.6,500/-. This Court is of the considered view that based on the pleadings and materials available on record, the notional monthly income of the claimant has to be assessed at Rs.6,500/- fixed by the Tribunal.

14. As seen from the impugned award, the Tribunal has also not awarded any compensation towards loss of future prospects which the claimant is legally entitled to as per the decision of the Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others reported in 2017 (2) TN MAC 609 (SC). In accordance with the said judgment, this Court awards 40% as loss of future prospects to the claimant. The claimant was admittedly 21 years old at the time of the accident. Since he was 21 years old, the Tribunal has rightly applied 18 multiplier. Accordingly, this Court enhances the compensation towards the loss of earning capacity to Rs.9,82,800/- from Rs.6,48,000/- awarded by the Tribunal under the impugned award.

15. Insofar as the compensation awarded by the Tribunal under the heads a) transportation and b) pain and suffering are concerned, they are low and not in accordance with the settled practice and therefore, it has to be enhanced. After giving due consideration to the avocation and nature of injuries sustained

by the claimant, the compensation awarded by the Tribunal towards transportation and pain and suffering is enhanced to Rs.20,000/- and Rs.1,00,000/- respectively by this Court. The Appellant/claimant had to amputate his left leg due to the injuries sustained by him as a result of the accident and therefore, the Tribunal ought to have awarded adequate compensation to the claimant towards attender charges which it has failed to do so under the impugned award. This Court is of the considered view that a sum of Rs.25,000/- will adequately compensate the claimant towards attender charges.

16. Insofar as the compensation awarded by the Tribunal towards loss of income, extra nourishment and loss of amenities are concerned, at Rs.24,000/- 10,000/- and Rs.50,000/- respectively, this Court is of the considered view that the said compensation awarded by the Tribunal under those heads is a just compensation.

17. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.8,17,000/- to Rs.12,11,800/- as detailed hereunder:

Heads	Amount awarded by the Tribunal	Award Amount (Rs.)
Loss of Income for 4 months	24,000/-	24,000/-
Transportation charges	10,000/-	20,000/-
Extra nourishment	10,000/-	10,000/-
Loss of amenities of life, Social activities and Loss of Marriage prospects	50,000/-	50,000/-
Pain and Suffering	75,000/-	1,00,000/-
Loss of earning capacity	6,48,000/-	9,82,800/-
Attender charges	...	25,000/-
Total	8,17,000/-	12,11,800/-

18. Since the contention of the Appellant in C.M.A No.154 of 2014 questioning its liability has been rejected by this Court and in view of the enhancement of compensation by this Court in favour of the Appellant in CMA No.2495 of 2014, the appeal filed by the Insurance Company in CMA No.154 of 2014 does not deserve any merit and the said appeal is dismissed.

19. However, the appeal filed by the claimant in CMA No.2495 of 2014 is partly allowed as per the aforesaid terms. The rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second Respondent/Insurance Company is directed to deposit the modified award amount of Rs.12,11,800/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.4043 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to: The Section Officer
V.R.Section,
High Court of Madras.

C.M.A.Nos.154 & 2495 of 2014
and
M.P No.1 of 2014 in CMA No.154 of 2014

SV(CO)
CSR 21.04.2021