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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.NO.2401 OF 2014

Sundari

.. Appellant/Claimant

..Vs..

1. Sri Kanniamman PTC Ulaikkum Magalir Sangam,
Meenpidikkum Makkal Paguthi,
Nochikuppam, Marapakkam Post,
Tindivanam Taluk.

2. M/s.National Insurance Co. Ltd.,
Divisional Office, Post Box No.157,
No.110, Jawaharlal Nehru Street, 2nd Floor,
Puducherry 605 001.

.. Respondents/Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 06.02.2014, made in M.C.O.P. No.136 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal) Madurantagam.

For Appellant : Ms.R.Rajashama Gayathri
for M/s.K.Govi Ganesan

For Respondents: No appearance (For R1)

M/s.N.B.Surekha (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of compensation granted by the award dated 06.02.2014, made in M.C.O.P. No.136 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal), Madurantagam.



2.The appellant-claimant filed M.C.O.P. No.136 of 2007, on the file of the Sub Court, (Motor Accident Claims Tribunal), Madurantagam, claiming a sum of Rs.1,50,000/- as compensation for the injuries sustained by her in the accident that took place on 10.11.2006.

3.According to the appellant, on the date of accident, she traveled along with other fishermen in the Minidor Van bearing Registration No.TN-32-V-9960 belonging to the 1st respondent from Pondy to Kadapakkam on ECR Road. While nearing Anichankuppam, the driver of the Minidor Van drove the same in a rash and negligent manner and capsized the vehicle and caused the accident. In the accident, the appellant and others sustained grievous injuries. The accident occurred only due to rash and negligent driving by the driver of the Minidor Van belonging to the 1st respondent. Hence, the appellant filed claim petition, claiming compensation against the respondents as owner and insurer of the offending vehicle.

4.The 1st respondent remained exparte before the Tribunal.

5.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the appellant in the claim petition. According to the 2nd respondent, the 1st respondent violated the policy conditions by permitting the appellant, who was an unauthorized passenger, to travel in the goods vehicle. The 1st respondent has not produced the Insurance Policy of the offending vehicle and driving license of the driver of the offending vehicle. Hence, the 2nd respondent is not liable to indemnify the 1st respondent. The appellant has to prove the age, avocation and income, injuries sustained, disability suffered and treatment taken by her, to claim compensation and prayed for dismissal of the claim petition.

6.Before the Tribunal, the appellant examined herself as P.W.1, examined Doctor as P.W.2 and marked 13 documents as Exs.P1 to P13. The appellant examined one K.A.Iyyanathan as R.W.1 and marked two documents as Exs.R1 & R2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Minidor Van belonging to the 1st respondent and directed the 1st respondent to pay a sum of Rs.61,500/- as compensation to the appellant. The Tribunal dismissed the claim petition as against the 2nd respondent-Insurance Company.

8.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent-Insurance Company and not



being satisfied with the amounts awarded by the Tribunal in the award dated 06.02.2014, made in M.C.O.P. No.136 of 2007, the appellant has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the Minidor Van belonging to the 1st respondent was insured with the 2nd respondent at the time of accident. The Tribunal ought not to have dismissed the claim petition as against the 2nd respondent. The Tribunal ought to have ordered pay and recovery. The learned counsel further contended that the appellant suffered fracture on his right shoulder and right hand wrist. The Tribunal has awarded meagre amount as compensation for the injuries sustained by the appellant in the accident. Due to the injuries sustained, the avocation of the appellant is totally affected. The Tribunal ought to have awarded more compensation towards disability. The appellant has taken treatment as inpatient treatment in Hospital for a period of 14 days and P.W.2 Doctor examined the appellant and certified that the appellant suffered 25% disability. The Tribunal ought to have awarded more compensation towards pain and suffering and extra nourishment. The Tribunal ought to have ordered pay and recovery and prayed for a direction to fasten the liability on 2nd respondent and for enhancement of the compensation.

10.Though notice has been served on the 1st respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

11.The learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

12.Heard learned counsel appearing for the appellant as well as the 2nd respondent-Insurance Company and perused the materials available on record.

13.From the materials on record, it is seen that the Tribunal considering the oral and documentary evidence let in by the parties, held that appellant traveled in the Minidor Van as unauthorized passenger at the time of accident and dismissed the claim petition as against the 2nd respondent-Insurance Company and directed the 1st respondent to pay compensation. The contention of the learned counsel appearing for the appellant that Tribunal ought to have ordered pay and recovery is without merits. It is not the case of the appellant that she did not travel as unauthorized passenger in the offending vehicle at the time of accident. It is well settled that Insurance Company is not liable to pay compensation for unauthorized passengers. When the Insurance Company is not liable to pay compensation, the

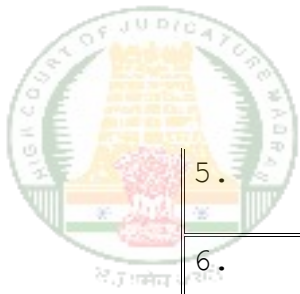


question of pay and recovery does not arise. Hence, the award of the Tribunal dismissing the claim petition as against the 2nd respondent-Insurance Company is confirmed and the 1st respondent is directed to pay compensation to the appellant.

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14. As far as the quantum of compensation is concerned, the learned counsel appearing for the appellant contended that the appellant suffered 25% disability, as assessed by P.W.2 Doctor. The Tribunal reduced the percentage of disability suffered by the appellant to 20%, on the ground that assessment of P.W.2 Doctor is on the higher side. The reason given by the Tribunal for reducing the percentage of disability from 25% to 20% is not valid. The appellant is entitled to compensation for 25% disability, at the rate of Rs.2,000/- per percentage of disability. Hence, the amount awarded by the Tribunal towards disability is enhanced to Rs.50,000/- [Rs.2,000/- x 25%]. The appellant contended that at the time of accident, she was doing Fish business and was earning a sum of Rs.4,000/- per month. In the absence of any materials produced by the appellant to prove the same, the Tribunal fixed a sum of Rs.200/- per day as notional income of the appellant and awarded a sum of Rs.2,800/- towards loss of income for 14 days. For the injuries sustained in the accident, the appellant has taken treatment as inpatient in Hospital for a period of 14 days. Due to the injuries sustained in the accident, appellant would not have worked atleast for a period of 20 days. The amounts granted by the Tribunal towards loss of income is meagre and hence the same is enhanced to Rs.10,000/-. The Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.7,500/- is granted towards attendant charges. The Tribunal has awarded meagre sum of Rs.2,000/- towards transportation expenses. The appellant is entitled to a sum of Rs.5,000/- towards transportation expenses. The amounts awarded by the Tribunal under 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
1.	Loss of income	2,800/-	10,000/-	Enhanced
2.	Transportation	2,000/-	5,000/-	Enhanced
3.	Medical expenses	9,700/-	9,700/-	Confirmed
4.	Disability	40,000/-	50,000/-	Enhanced



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5.	Pain and sufferings	5,000/-	5,000/-	Confirmed
6.	Attendant charges	-	7,500/-	Granted
7.	Extra nourishment	2,000/-	2,000/-	Confirmed
	Total	61,500/-	89,200/-	Enhanced by Rs.27,700/-

15. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.61,500/- is enhanced to Rs.89,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.136 of 2007. On such deposit, the appellant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appeal is dismissed as against the 2nd respondent-Insurance Company. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Madurantagam.

Copy To

The Section Officer,
V.R Section, High Court, Madras.

+1cc to M/s.K.Govi Ganesan, Advocate, S.R.No.42450

+1cc to M/s.N.B.Surekha, Advocate, S.R.No.42447

C.M.A.No.2401 of 2014

AD(CO)
CS/30/09/2021