IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4688 of 2019

Devarasu ... Appellant /Petitioner

Vs.

1.Senthilraja

2.United India Insurance Company Limited,
Branch Office, SBI Upstairs,
Salem Road, Rasipuram - 637 408,
Namakkal District. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.10.2018 made in M.C.O.P.No.45 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.R.Nalliyappan

For R2 : Mr.J.Chandran

O R D E R

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 10.10.2018 made in M.C.O.P.No.45 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2.The appellant is claimant in M.C.O.P.No.45 of 2017 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. He filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.03.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the two wheeler belonging to the 1st respondent and dismissed the claim petition against the 2nd respondent/Insurance Company and directed the 1st respondent to pay a sum of Rs.1,36,000/- as compensation to the appellant.

4.Challenging the portion of the award dismissing the claim petition as against the 2nd respondent as well as not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

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 was working in Sago Factory and was earning a sum of Rs.6,000/- per month. The Tribunal fixed a meagre sum of Rs.3,000/- as monthly income of the appellant. In the accident, the appellant sustained malunited fracture radius and Ulna left forearm and due to the injuries, he could not continue his work as he was doing earlier. The Tribunal ought to have adopted multiplier method for awarding compensation towards disability. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities 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 motorcycle did not possess driving license at the time of accident and hence, the 2nd respondent is not liable to pay compensation. He further contended that the appellant has not produced any document to substantiate his claim that the appellant was earning a sum of Rs.6,000/- per month. In the absence of any material evidence with regard to income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant, which is not meagre. 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.It is the contention of the appellant that the accident has occurred due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent. The Tribunal considering oral and documentary evidence, held that the accident occurred only due to negligent act of the rider of the motorcycle. The 1st respondent knowing fully well that the rider of the motorcycle was not possessing driving license at the time of accident, permitted him to ride the motorcycle, which is contrary to the statutory provisions. For the statutory violation of policy conditions, the Tribunal dismissed the claim petition as against the 2nd respondent/Insurance Company and directed the 1st respondent to pay compensation. It is well settled law that for not possessing driving license by the rider of the vehicle, Insurance Company cannot be exonerated in total from its liability. 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 to the present case, the portion of the award dismissing the claim petition as against 2nd respondent/Insurance Company from its liability, on the ground that the rider of the motorcycle belonging to the 1st respondent did not possess driving licence, is liable to be set aside and it is hereby set aside. 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. In M.C.O.P.No.45/2017, the Tribunal has directed the 1st respondent to pay compensation to the appellant, since the 1st respondent was not possessing valid driving license at the time of accident. In the appeal, the 2nd respondent/Insurance Company is directed to pay compensation to the appellant at the first instance and recover the same from the 1st respondent. In view of the same, notice to the 1st respondent is dispensed with.

9.As far as quantum of compensation is concerned, it is the contention of the appellant that he was aged 45 years at the time of accident and was earning a sum of Rs.6,000/- per month by working in Sago Factory. The appellant has not let in any evidence to substantiate the said contention. In the absence of any material evidence with regard to avocation and income of the appellant, the Tribunal fixed a sum of Rs.3,000/- as monthly income of the appellant and awarded a sum of Rs.6,000/- (Rs.3,000/- X 2) towards loss of income for two months. The accident has occurred in the year 2012 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.7,500/- is fixed as monthly income of the appellant. Due to the injuries sustained in the accident, the appellant would not have worked atleast for a period of six months. Therefore, a sum of Rs.45,000/- (Rs.7,500/- X 6) is awarded towards loss of income for six months. Due to the accident, the appellant has suffered malunited fracture radius and ulna left forearm. He has examined PW.2/Doctor, who has assessed the disability of the appellant as 30%. The appellant has not proved that he suffered functional disability and there is loss of earning capacity. In the absence of any evidence, the Tribunal has accepted the disability assessed by the P.W.2/Doctor and awarded a sum of Rs.90,000/- towards disability by awarding Rs.3,000/- per percentage of disability, which is proper. The appellant has taken treatment as in-patient for more than one month in two different hospitals. The Tribunal has not awarded any compensation towards attendant charges. Considering the nature of injuries and period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. The amounts awarded by the Tribunal under all the 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 or reduced
1.	Loss of income	6,000	45,000	Enhanced
2.	Transport to hospital	5,000	5,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Disability	90,000	90,000	Confirmed
5.	Pain and sufferings	25,000	25,000	Confirmed
6.	Attendant charges	-	10,000	Granted
	Total	Rs.1,36,000/-	Rs.1,85,000/-	Enhanced by Rs.49,000/-

10.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,36,000/- is hereby enhanced to Rs.1,85,000/- together 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 2nd respondent/Insurance Company 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 at the first instance and recover the same from the 1st respondent. 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. No costs.

Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

mtl

To

1.Chief Judicial Magistrate,
The Motor Accident Claims Tribunal,
Namakkal.

+1 cc to Mr.J.Chandran Advocate sr533
+1 cc to Mr.R.Nalliyappan Advocate sr96

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