IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021

DELIVERED ON : 13.08.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.2343 OF 2012

The National Insurance Co. Ltd.,
Rep. by its Divisional Manager,
LRN Building,
Saradha College Main Road,
Salem - 7. ..Appellant/ 2nd Respondent

Vs.

1. Periyammal
W/o. Srirangan .. 1st Respondent/ Petitioner

2. P.Panneer Selvam
S/o. Palanisamy ..2nd Respondent/ 1st Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.08.2011 in M.C.O.P.No.389 of 2007 on the file of the Motor Accident Claims Tribunal, II Additional Subordinate Judge, Salem.

For Appellant	::	Mr.S.Vadivel
For Respondents	::	Mr.V.Vijayakumar for R1 No Appearance for R2

JUDGMENT
(The matter was heard through video-conferencing)

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 29.08.2011 in M.C.O.P.No.389 of 2007 on the file of the Motor Accident Claims Tribunal, II Additional

Subordinate Judge, Salem.

2. The case in brief are as follows:

On 24.10.2005 at about 11.00 hrs, the claimant was travelling in a Tempo Van bearing Registration No. TN-45-Y-6750. The driver of the said Tempo Van drove the vehicle in a rash and negligent manner and dashed against the pedestrian and the Flag Post, as a result of which, the claimant sustained grievous injuries all over the body and his right hand finger was amputated.

3. Mr.S.Vadivel, the learned counsel for the appellant/Insurance Company had submitted his arguments. As per his submissions, the liability fixed on the part of the Insurance Company is absolutely not correct, since the injured travelled in the said Vehicle as a gratuitous passenger and the owner of the vehicle, thus violated the insurance policy. Therefore, the respondent/Insurance Company had vehemently opposed the claim petition. However, the Tribunal had fastened the liability on the insurer. Aggrieved by the same, the Insurance Company had filed this appeal seeking to set aside the award passed by the Tribunal.

4. Mr.V.Vijayakumar, the learned counsel for the respondent/claimant had disputed the contentions of the learned counsel for the appellant/Insurance Company. He further submitted that a similar petition filed by an aggrieved person in CMA.No.1741 of 2008 was dismissed by this Court, by an order dated 03.02.2020 following the decision of this Court reported in 2019 (2) TNMAC 188 (Manjula and others Vs. V.M.Sakthivel and others). Therefore, the appeal lacks merits and it has to be dismissed.

5. The second respondent/Insurance Company had filed counter disputing the claim of the petitioner/claimant.

"(iii) It is false to say that the petitioner was getting not less than Rs.3,000/- per month by working as coolie as mentioned in column No.4 to 6. The petitioner is only an agricultural coolie and he may get less than Rs.40/- per day and also get work only 2 or 3 days in a week, and hence, there is no question of standard income.

(iv) The nature of the injuries mentioned in column No.11 and disability mentioned in column No.13 are all false one. The respondent submits that the petitioner sustained only simple injury and it will be cured on the date of accident itself and hence, there is no question of disability.

(v) This petitioner has no right to claim a sum of Rs.1.00 lakh in various heads as mentioned in column No.21 of the petition, since he has not produced any document to prove the same.

(vi) The allegation stated in column No.23 is nothing but false. It is false to say that the driver of the Tempo drove the vehicle in a very rash and negligent manner and hit a flag post and due to that, the petitioner and others were thrown out the Tempo and sustained injury. The respondent submits that the first respondent had used his vehicle against the policy condition, though he took permit only for Goods Carriage, but the petitioner and others were traveled as gratuitous passengers. As per the policy and permit condition, they have no right to travel on the said Tempo. The owner and driver have used the vehicle for a wrongful gain, beyond the policy and permit condition. They have collected amounts from the petitioner and others and allowed them to travel on the said Tempo. As per law, the respondent is not at all liable to pay any amount to the petitioner. In this case, the owner and driver alone are liable to pay the compensation amount to the petitioner. The respondent further submits that in this case, the owner and driver have used the vehicle as against the MVI rules and regulations.

6. The petitioner herself examined as P.W.1 and Exs.P.1 to P3 were marked as exhibits. One Selladurai was examined as R.W.1 and the copy of the Insurance Policy was marked as Ex.P.1. The Insurance policy of the first respondent was marked as Ex.R1.

7. On assessment of the evidence, the learned Motor Accidents Claims Tribunal (II Additional Subordinate Judge, Slaem) had awarded a sum of Rs.1,55,000/-

8. Aggrieved by the award passed by the learned Motor Accidents Claims Tribunal, second respondent/Insurance Company has filed this appeal.

9. As per the grounds of appeal filed by the second respondent/Insurance Company, the learned Tribunal failed to consider the contentions raised by the second respondent/Insurance Company in their counter and in the evidence of R.W.1/the officer of the Insurance Company, in which, they disputed the claim of the injured/petitioner, as she was a gratuitous passenger and she had not travelled as owner of the goods.

10. Point for consideration

Whether the award passed by the learned Tribunal in MCOP.No.389/2007 is to be set aside?

11. On a perusal of the award passed by the tribunal, it is found that the claimant had stated that on 24.10.2005 at about

11.00 hrs she travelled as a passenger in the Tempo Van bearing Registration No.TN 45 Y 6750. The said vehicle was driven by its driver from Belur towards Salem on the main road, at a very high speed in a rash and negligent manner and dashed against a pedestrian and thereafter at a flag post and toppled upside-down. In the impact, the petitioner sustained amputation of right hand finger and multiple injuries all over the body. Immediately, the petitioner was rushed to a Government Hospital Salem for treatment. She took treatment as inpatient from 24.10.2005 for about two months. Later she undertook treatment as out patient and still continuing treatment.

12. The petitioner had examined herself as P.W.1 and the documents were marked as Exs.P.1 to P.3. Ex.P.1 is the proof of FIR, Ex.P.2 is the proof of the wound certificate and Ex.P.3 is the medical treatment book issued by the Government M.K.M.C. Hospital, Salem. She had claimed that she suffered severe injuries and her fingers in right hand was amputated. When that was the claim of the petitioner, it is the duty of the petitioner to prove by evidence of the doctor regarding amputation and partial permanent disability, but that was not done by her.

13. The evidence of the petitioner's side was closed as P.W.1 and Exs.P.1 to P3 were marked. The second respondent/Insurance Company had examined its official and they had disputed the claim of the petitioner/claimant that she suffered partial permanent disability.

14. While assessing the evidence, the learned Tribunal had failed to consider the fact that the petitioner/claimant had not travelled as a passenger as owner of the goods. There is no pleading in the claim petition that she traveled along with coconut bags, as owner of the goods. Breach of evidence, without pleadings will not help her case. The learned Tribunal had stated in the award that the petitioner travelled as owner of the goods by paying a sum of Rs.10/- for her goods as fare in the vehicle. Therefore, the award passed by the learned Tribunal by granting a sum of Rs.1,50,000/- for pain and sufferings is without any basis. As per the reported rulings of the Hon'ble Supreme Court as well as Hon'ble High Court in cases of this nature when the victim of motor accident, who is the claimant before the Court, is unable to prove dis-figurement partial permanent disability is affecting her livelihood. In such cases, the claimant concerned is entitled only for compensation under the head pain and sufferings, as per the Motor Accidents Claims Rules. For simple injuries Rs.5000/- is entitled, but the Tribunal by exercising its discretion, considering the living index of the period, in which, the injured had suffered injuries in the accident granted award a

sum of Rs.10,000/- for the simple hurt. Subsequently, it has raised considering the present prevailing cost of living and living index. As per the reported rulings of Ankoor Sethi Rs.40,000/- is granted for pain and sufferings. Here in this case, the Tribunal awarded Rs.1,50,000/- towards pain and sufferings. As per the evidence, petitioner/claimant had undergone treatment in the Government Hospital, Salem as per Ex.P.3. Therefore, she is not entitled to any compensation under the head medical expenses. Rightly, the Tribunal had not granted any compensation under the head "medical expenses". For simple hurt, the Tribunal cannot grant any award or compensation under the head "Transportation and Extra Nourishment". Therefore, the award of Rs.1,50,000/- towards pain and sufferings, Rs.2,500 towards extra nourishment and Rs.2,500/- towards transportation are against the guidelines regarding the simple hurt.

15. Though the petitioner/claimant is unable to prove her disfigurement amputation in her right hand along with evidence of the Doctor, the learned Tribunal had discussed injury suffered by her as per Ex.P.3, but it had not mentioned about the amputation. Therefore, the claim of amputation has to be rejected. If the claim of amputation is rejected, the claim that she had suffered partial permanent disability is also to be rejected. Instead, the learned Tribunal had awarded a sum of Rs.1,50,000/- under the head pain and sufferings. Therefore, the second respondent/Insurance Company had preferred this appeal.

16. In the appeal, the second respondent/Insurance Company relied on the rulings reported in 2019 (2) TNMAC 188 (Manjula and Ors Vs. V.M.Sakthivel and Ors).

17. The arguments of the learned counsel for the respondent/claimant relied on the judgment of this Court and the contention of the appellant/Insurance Company are rejected and cannot be considered by this Court. In the reported rulings, the learned Judge had stated that the injured in that case had travelled not as a gratuitous passenger. She trevelled only as the owner of the goods, but the pleadings does not state that the petitioner travelled along with goods. She had only stated that she had travelled in the bus. Therefore, the said rulings will not help the case of the respondent. In this case, Insurance Company clearly stated in the counter that the claimant had traveled as a gratuitous passenger and she had suffered only simple injuries. Though the evidence also states that she had suffered only simple injuries, the learned Tribunal failed to consider the same and passed an exhorbitant sum of Rs.1,55,000/- towards pain and sufferings.

18. Therefore, the rulings placed by the learned counsel for the respondent will not help his case. In the absence of medical evidence, the claim that the appellant/claimant suffered amputation of her right hand and she is unable to lift anything in the right hand, is not accepted. The claim of the partial permanent disability had to be rejected by the Tribunal. The learned Tribunal had awarded Rs.1,50,000/-, which is excessive. The respondent herein, the petitioner/claimant before the learned Tribunal is entitled to maximum of Rs.40,000/- towards pain and sufferings for the simple hurt and not entitled to other heads like “Transportation and Nutritious Food”. Therefore, the award passed by the Tribunal is to be set aside.

19. Considering the fact that the accident took place in the year 2005, the claim petition was numbered in the year 2007, the learned Tribunal had passed the award dated 29.08.2011, the appeal preferred by the second respondent/Insurance Company was numbered in the year 2012 and now the appeal is taken up for disposal in the year 2021, instead of setting aside the award, the award is modified. Thus, the award of Rs.1,55,000/- passed by the learned Tribunal is reduced to Rs.40,000/- .

20. Point for consideration is answered in favour of the appellant/Insurance Company and against the respondent/claimant.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.389 of 2007 on the file of the Motor Accidents Claims Tribunal, II Additional Sub ordinate Court, Salem, with accrued interest at the rate of 7.5% per annum from the date of appeal was numbered till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433. If the appellant/Insurance Company had deposited the award amount, the balance of the award that is now decided in this Appeal shall be withdrawn by the Appellant/Insurance Company from the deposited amount before the learned Motor Accidents Claims Tribunal. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dh

To

1. II Additional Subordinate Judge,
   Motor Accident Claims Tribunal/
   Salem.

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

+1cc to Mr.V.Vijayakumar , Advocate, S.R.No.40195
+1cc to Mr.S.Vadivel, Advocate, S.R.No.40482

C.M.A.No.2343 of 2012

KV(CO)
PM/26/10/2021