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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2021

Pronounced on : 13.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.844 of 2012

M.D.Hemachandran
S/o. Duraisami Pillai

.. Appellant/Petitioner

Vs.

1. Samraj,
S/o. Muniraj

2. The Divisional Manager,
Oriental Insurance Company Limited,
Jambu Bala Complex,
Arcot Road, Vellore.

3. G.Jagadeesan
S/o. Gopalakrishnan

4. Bajaj Allianz General Insurance Company Ltd.,
New No.30, Old No.85, 1st Avenue (1st Floor),
Ashok Nagar, Chennai.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.09.2011 in M.C.O.P.No.368 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

For Appellant : Mr.N.Sivakumar

For R2 : Mr.N.Sampath

For R4 : Mr.T.K. Prem kumar

JUDGMENT

The Civil Miscellaneous Appeal had been filed by the appellant seeking enhancement of compensation granted by the



Tribunal in the award dated 30.09.2011 in M.C.O.P.No.368 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track Court, Vellore.

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2. The facts relevant to the case in brief are as follows:

On 14.03.2009 at about 5.15 pm., the petitioner was travelling in a Car bearing Registration No.TN-07-L-5166 towards Bangalore. When the said Car was proceeding on Chennai - Bangalore National Highways Road in Natrampalli Sandiyur "U" turn, an APE Truck bearing Registration No.TN-23-BY-1189 driven by its driver in a rash and negligent manner and turned on the right side of the road and dashed against said Car. In the accident, the front portion of the Car was damaged. The petitioner sustained grievous injuries on his right side shoulder. Immediately, he was admitted in the Government Hospital, Vaniyambadi and then shifted to the Government Medical College Hospital, Vellore for better treatment. The first respondent is the owner of the APE Truck Bearing Registration No. TN-23-BY-1189 and the second respondent is its insurer. The third respondent is the owner of the Maruti Car bearing Registration No.TN-07-L-5166 and fourth respondent is its insurer.

3. After due enquiry, based on the assessment of evidence before the Tribunal, the Tribunal had passed an award for a sum of Rs.1,37,000/- as compensation.

4. Aggrieved by the same, the appellant/claimant has filed this appeal seeking enhancement of compensation granted by the Tribunal.

5. Mr.N.Sivakumar, learned counsel for the appellant would submit that the learned Tribunal while awarding compensation had observed that the driver of the offending vehicle, which is a Light Motor Vehicle - Goods Career, even though possessed driving licence did not possess badge and hence, the Insurance Company cannot be fixed liability. Therefore, the owner of the vehicle was directed to pay the compensation to the claimants. Assailing the order passed by the Tribunal, the present appeal has been filed. The learned counsel for the appellant relies on the rulings of the Hon'ble Supreme Court in the case of Mukund Dewgan Vs. Oriental Insurance Company Limited reported in 2017 (2) TNMAC 145, regarding the fastening the liability on the Insurance Company.

6. Mr.N.Sampath, the learned counsel for the 2nd respondent had submitted his submissions. As per his submissions, the learned Tribunal justified in observing that the Insurance Company need not be fastening with the liability as the driver



of the offending Goods Career vehicle was not having badge and thereby directing the vehicle owner to pay the compensation to the claimant is absolutely right. He relied on the following ruling for supporting of his contentions:

1.2007 (2) TN-MAC 260

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7. Points for consideration

Whether the claimant as appellant is entitled to claim from the Insurance Company?

8. Perused the claim petition filed by the claimant before the Motor Accident Claims Tribunal in MCOP.No.368/2011, the counter filed by the second respondent/Insurance Company and the Judgment/Order passed by the Motor Accident Claims Tribunal and the Memorandum of appeal filed in this appeal.

9. On perusal of the records, it is found that the Tribunal had awarded compensation to the claimant based on the evidence available before the Tribunal, Additional District Sessions Judge/Fast Track Court, Vellore. The second respondent/Insurance Company had disputed the competency of the driver of the first respondent's vehicle stating that he was not having badge to drive transport vehicle eventhough it was a light motor vehicle. Therefore, the second respondent/Insurance Company cannot be fastened with the liability to pay compensation. Based on the said contention of the second respondent/Insurance Company, the Tribunal had exonerated the second respondent/insurance Company and had fastened the liability on the owner of the vehicle. Aggrieved by the same, the claimant himself had preferred this appeal to set aside or modify the order of the Tribunal and to fasten the liability of paying compensation on the insurer of the said vehicle.

10. The learned counsel for the appellant/claimant relied upon the judgment of the Hon'ble Supreme court reported in 2017 (2) TNMAC 145 (Mukund Dewgan Vs. Oriental Insurance Company Limited) in support of his contentions. Based on the said rulings, the claimant seeks to fasten the liability on the second respondent/Insurance Company. In the said rulings, the Hon'ble Supreme Court had held that

"(iv) The effect of amendment of Form 4 by insertion of "transport vehicle" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any



endorsement to that effect."

Therefore, the contention of the learned counsel for the second respondent/Insurance Company that they are not liable to pay compensation, cannot be accepted.

11. Based on the reported rulings in 2009 ACJ 2719, the insurer was exonerated. The Tribunal had relied on the rulings of the High Court in Madras and TNMAC, based on which he had not fastened the liability on the Insurance Company.

12. In the appeal, the claimants seeks enhancement of the award under the head "Transport Charges", "Nutritious charges" and for "permanent disability". Considering the nature of injuries sustained by the claimant and the disability certificate of P.W.2, Doctor, who assessed the disability of the petitioner at 40%, this Court fixes Rs.2000/- per percentage of disability, instead of Rs.1500/- as awarded by the Tribunal. Therefore, this Court fixes Rs.80,000/- towards Partial Permanent Disability.

13. Since the sum of Rs.5,000/- awarded by the Tribunal towards "Transportation" appears to be on the lower side, the same is hereby enhanced to Rs.10000/-. Similarly, the sum of Rs.5,000/- awarded by the Tribunal towards "Extra Nourishment" is also enhanced to Rs.10,000/-.

14. Further, the amounts awarded by the Tribunal under the heads "Damages to Clothes", "Pain and Sufferings", "Attender Charges", "Loss of Amenities", "Mental Agony", "Medical Expenses" and "Future Medical Expenses" are just and fair, and hence, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Permanent Disability	60,000	80,000
2	Pain and Sufferings	20,000	20,000
3	Extra Nourishment	5,000	10,000
4	Transportation	5,000	10,000
5	Attender Charges	5,000	5,000
6	Damages to Clothes	5,000	5,000
7	Loss of Amenities	5,000	5,000
8	Mental Agony	5,000	5,000
9	Medical Expenses	17,000	17,000
10	Future Medical Expenses	10,000	10,000



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Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
	Total	1,37,000	1,67,000

15. Based on the reported ruling of the High Court, Madras reported in 2009 ACJ 2719, the insurer was exonerated. In this appeal the reported ruling of the Hon'ble Supreme Court reported in 2017 (2) TNMAC 145 (Mukund Dewgan Vs. Oriental Insurance Company Ltd) was cited by the claimants/Appellants wherein the Hon'ble Supreme Court had fastened the liability on the Insurance Company, if the driver of the vehicle involved in this accident had a valid license to drive Light Motor Vehicle, even if he/she does not have badge or endorsement to drive Transport Vehicle. Based on the said ruling the liability is fastened on the Insurance Company.

16. Thus, the point for consideration is answered in favour of the appellants/claimants and against the respondent/Insurance Company herein.

17. 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.368 of 2011 on the file of the Motor Accidents Claims Tribunal cum Fast Track Court, Vellore, with accrued interest at the rate of 7.5% per annum from the date of the claim petition 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, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months from the date of receipt of a copy of this Judgment, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Motor Accidents Claims Tribunal
Fast Track Court- III, Namakkal

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

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.40234

+lcc to Mr.T.K. Prem kumar, Advocate, S.R.No.40628

C.M.A.No.844 of 2012

SMI (CO)
CT/28/12/2021