IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3280 of 2014
and
M.P.No.1 of 2014

M/s. Bajaj Allianz General Insurance Company Limited,
G.E.Plaza, Airport Road,
Airwada,
Pune - 411 006. ... Appellant/2nd Respondent

Vs.

1.Ravi ...Ist Respondent/Petitioner
2.Murugan ...2nd Respondent/Ist Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 11.04.2014 made in M.C.O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

For Appellant : Mr.Michael Visuvasam

For R1 : No appearance

For R2 : Not Ready in Notice

J U D G M E N T

(The matter is heard through "Video Conferencing/Hybrid Mode".)

This Civil Miscellaneous Appeal has been filed against the award dated 11.04.2014 made in M.C.O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

2.The appellant is the 2nd respondent in M.C.O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.12.2010.

3.According to 1st respondent, on 02.12.2010 at about 02.00 P.M., while he was travelling in the Bolero pickup van bearing Registration No.TN 29 AF 8906 on the Kadathur – Bommidi road opposite to Kalaimagal School, Thindalanur, the driver of the van drove the same in a rash and negligent manner and to avoid the bus coming in the opposite direction, dashed against the tamarind tree and caused the accident. In the accident, the 1st respondent and others sustained injuries. After the accident, the 1st respondent was taken to Government Dharmapuri Medical College Hospital, Dharmapuri and has taken treatment as inpatient from 02.12.2010 to 05.12.2010. Thereafter he has taken treatment as inpatient at DNV Polyclinic from 13.12.2010 to 17.12.2010 and underwent surgery on 14.12.2010. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant, being the owner and insurer of the Bolero pickup van respectively.

4.The 2nd respondent, being the owner of the Bolero pickup van remained exparte before the Tribunal.

5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent. The appellant denied the manner of accident as alleged by the 1st respondent. According to appellant, the driver of the Bolero pickup van drove the same slowly and carefully and at that time, a bus was coming in the opposite direction in a rash, negligent and zigzag manner on the wrong side. In order to avoid the accident, the driver of the van swerved his vehicle to the extreme left side in mud portion and thus the accident occurred. Hence, the driver of the van is not responsible for the accident. The 2nd respondent's van was not insured with the appellant on the date of accident. The driver of the van was not possessing valid driving license at the time of accident. The vehicle was a goods vehicle and the 1st respondent and others traveled in the van only as unauthorized passengers. They did not travel as owner of the goods. The 1st respondent has to prove that the owner of the van has paid premium to cover the risk of passengers travelling in the van. The vehicle was used in violation of statutory provisions and hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, injuries, period of treatment taken and medical expenses incurred by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Ramamoorthy was examined as P.W.2, Dr.Krishnakumar was examined as P.W.3 and one Pachiyappa Achari was examined as P.W.4 and 18 documents were marked as Exs.P1 to P18. The appellant examined two witnesses as R.W.1 & R.W.2 and marked four documents as Exs.R1 to R4.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the van belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,81,000/- as compensation to the 1st respondent.

8.To set aside the said award dated 11.04.2014 made in M.C.O.P.No.199 of 2012, the appellant-Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the 1st respondent failed to prove that he traveled in the offending vehicle along with wooden logs by producing documents like consignment note, trip sheet, goods vehicle record, delivery note, weigh bridge receipt, etc,. The 1st respondent failed to prove that he traveled in the goods vehicle as owner of fire wood accompanying such goods in the goods vehicle at the time of accident. One Senthil Kumar, who lodged the complaint based on which F.I.R. was registered has stated that he was owner of fire woods. In view of the same, the 1st respondent is an unauthorized passenger in the goods vehicle. Even if the 1st respondent has traveled along with the goods as an agent of owner, his risk is not covered under the provisions of Section 147 of the Motor Vehicles Act. The seating capacity of the van is only 2. At the time of accident, along with driver three persons have traveled. The 1st respondent has not proved that he is an employee of the said Senthil Kumar. The 1st respondent is only an unauthorized passenger and hence, the appellant is not liable to pay any compensation. The learned counsel appearing for the appellant further submitted that the 2nd respondent, who is the owner-cum-driver of the van did not possess driving license at the time of accident. The appellant has proved the same by examining Official from R.T.O. and marking Exs.R3 & R4, letter issued to the 2nd respondent to produce the driving license. Even in Ex.P4 / Motor Vehicle Inspector's Report, it has been mentioned that driving license 'not produced'. The

Tribunal ought to have fastened the liability on the part of the 2nd respondent and exonerated the appellant-Insurance Company from its liability for violation of policy and permit conditions. He further contended that P.W.3/Doctor is not the Doctor who treated the 1st respondent. Assessment of P.W.3/Doctor is contrary to the guidelines issued by the Government of India and assessment is not based on any scientific method. P.W.3/Doctor has not attached any worksheet with the disability certificate. The 1st respondent suffered injury only in a particular limb and disability would not be more than 30%. The Tribunal erred in considering the disability certificate issued by P.W.3/Doctor for whole body and awarded compensation excessively by adopting multiplier method and prayed for setting aside the award of the Tribunal.

10.Though the 1st respondent entered appearance through counsel, today when the matter is taken up for final hearing, there is no representation for him. The 2nd respondent remained exparte before the Tribunal. Hence, notice to 2nd respondent is dispensed with.

11.Heard the learned counsel appearing for the appellant and perused the entire materials on record.

12.From the materials on record, it is seen that according to 1st respondent, he traveled along with fire wood in the offending vehicle. The accident occurred due to rash and negligent driving by the 2nd respondent, owner-cum-driver of the offending vehicle. The 1st respondent proved his contention by examining himself as P.W.1 and marking F.I.R., which was registered against the 2nd respondent as Ex.P1. The appellant has not let in any contra evidence to disprove the case of 1st respondent. The Tribunal considering the oral and documentary evidence let in by the 1st respondent has rightly held that accident has occurred only due to rash and negligent driving by 2nd respondent.

13.It is the contention of the appellant that the 2nd respondent did not possess driving license at the time of accident. To prove their contention, the appellant examined an official from R.T.O as R.W.1 and R.W.2. R.W.2 has deposed that there is no record to show that driving license was issued to 2nd respondent. The appellant also produced and marked the notice issued to the 2nd respondent to produce the driving license. The 2nd respondent failed to produce the driving license. In Ex.P4/Motor Vehicle Inspector's report also it has been stated that 'driving license not produced'. The appellant by examining

R.W.1/official from R.T.O and by producing documents, proved that 2nd respondent did not possess driving license at the time of accident. Even if the 2nd respondent did not possess driving license at the time of accident, the Insurance Company cannot be exonerated from its liability. As per the judgment of the Hon'ble Apex Court reported in (2004) 3 SCC 297 [National Insurance Co. Ltd. v. Swaran Singh and Ors.], the appellant is liable to pay the compensation at the first instance and recover the same from the 2nd respondent-owner of the offending vehicle.

14.It is the further contention of the appellant that the 1st respondent was an unauthorised passenger in the offending vehicle. On the other hand, it is the case of the 1st respondent that he traveled along with fire woods and proved the same by examining himself as P.W.1 and marking F.I.R., in which it has been stated that 1st respondent and others traveled along with fire woods. The appellant has not let in any contra evidence to disprove the evidence of 1st respondent and contents of F.I.R. to show that vehicle was empty at the time of accident. The contention of the appellant is that the 1st respondent is only an unauthorised passenger as one Senthil Kumar is the owner of the goods carried in the offending vehicle and 1st respondent failed to prove that he is an employee of the said Senthil Kumar. It is the specific case of the 1st respondent that he traveled along with fire woods and he prove the same by acceptable oral and documentary evidence. The case of the 1st respondent is not disproved by the appellant and the contention of the appellant that 1st respondent traveled as unauthorised passenger is not acceptable and appellant is liable to pay the compensation.

15.As far as quantum of compensation is concerned, it is the case of the 1st respondent that he suffered abrasion over anterior aspect of neck 2 X 1 cm, swelling tenderness, both bone fracture of right leg and multiple injuries all over the body and has taken treatment in the Government Dharmapuri Medical College Hospital, Dharmapuri from 02.12.2010 to 05.12.2010 and at DNV Polyclinic from 13.12.2010 to 17.12.2010. The 1st respondent examined P.W.3/Doctor and produced Ex.P2/Accident Register, Ex.P3 & P11/discharge summaries, Exs.P7 & P9/series of medical bills, Ex.P8/photographs, Exs.P12, P13 & P16/X-Ray, Ex.P14/case sheet and Ex.P15/disability certificate. P.W.3/Doctor deposed about the nature of injuries and disability suffered by 1st respondent. In the cross examination, he admitted that he has not issued the disability certificate as per the guidelines issued by Government of India. He also submitted that he has not seen the medical records of 1st respondent with regard to treatment taken by the 1st respondent. He deposed that after

2 ½ years of accident, he examined the 1st respondent and verified the case sheet issued by the Government Hospital, Dharmapuri. P.W.3/Doctor has not deposed that 1st respondent suffered functional disability and his earning capacity will be reduced. In the absence of any evidence, the Tribunal erroneously adopted multiplier method and granted compensation excessively. P.W.3/Doctor has not deposed that the 1st respondent cannot do any work due to the injuries sustained by him in the accident. In view of the same, the Tribunal is not correct in adopting multiplier method for awarding compensation. The 1st respondent is entitled to compensation only by adopting percentage method. Therefore, a sum of Rs.3,51,000/- awarded by the Tribunal towards loss of earning capacity by adopting multiplier method is liable to be set aside and it is hereby set aside.

16.P.W.3/Doctor certified that the 1st respondent suffered 50% disability and issued Ex.P15/disability certificate to that effect. The accident is of the year 2010. The 1st respondent is entitled to a sum of Rs.3,000/- per percentage of disability. Thus, the 1st respondent is entitled to a sum of Rs.1,50,000/- (Rs.3,000/- X 50% of disability) towards disability. The 1st respondent claimed that he was a Wood Merchant and was earning a sum of Rs.7,500/- per month. He has failed to prove the same. In the absence of any material evidence, the Tribunal fixed a sum of Rs.4,500/- per month as notional income of the 1st respondent and granted a sum of Rs.13,500/- towards loss of income for three months. The monthly income fixed by the Tribunal is meagre. Considering the year of accident and nature of work done by the 1st respondent, a sum of Rs.7,500/- as claimed by the 1st respondent is fixed as his monthly income. Due to the injuries sustained by him in the accident, the 1st respondent would not have worked atleast for a period of six months. Therefore, the compensation awarded by the Tribunal towards loss of income is modified to Rs.45,000/- (Rs.7,500/- X 6 months). The 1st respondent has taken treatment in the Government Dharmapuri Medical College Hospital, Dharmapuri from 02.12.2010 to 05.12.2010 and at DNV Polyclinic from 13.12.2010 to 17.12.2010. The Tribunal has not granted any amount towards attendant charges. Considering the period of treatment taken by the 1st respondent, he is entitled to a sum of Rs.10,000/- towards attendant charges. The amount awarded by the Tribunal towards extra nourishment is meagre and hence, the same is enhanced to Rs.10,000/-. The Tribunal has not granted any amount towards loss of amenities. Considering the nature of injuries and disability suffered by the 1st respondent, he is entitled to a sum of Rs.10,000/- towards loss of amenities. 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 earning capacity	3,51,000/-	-	Set aside
2.	Disability	-	1,50,000/-	Granted
3.	Pain and sufferings	20,000/-	20,000/-	Confirmed
4.	Medical expenses	85,000/-	85,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Loss of income	13,500/-	45,000/-	Enhanced
7.	Extra nourishment	5,000/-	10,000/-	Enhanced
8.	Damages to clothes	1,500/-	1,500/-	Confirmed
9.	Attendant charges	-	10,000/-	Granted
10.	Loss of amenities	-	10,000/-	Granted
	Total	Rs.4,81,000/-	Rs.3,36,500/-	Reduced by Rs.1,44,500/-

17.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,81,000/- is hereby reduced to Rs.3,36,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the 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, to the credit of M.C.O.P.No.199 of 2012 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri, at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-

Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.199 of 2012, if the entire award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Dharmapuri.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.68158

C.M.A.No.3280 of 2014

br[co]
srg 16/02/2022