BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 13.07.2021
Delivered on : 24.08.2021
CORAM:
THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) Nos.1464 of 2012 and 911 of 2013
and
M.P.(MD)No.1 of 2012

C.M.A(MD) No.1464 of 2012
The Branch Manager,
M/s.The Iffco-Tokyo General Insurance Co.Ltd.,
No.335/1a, V.V.Complex,
North Bye Pass Road, Tirunelveli. ... Appellant/Respondents-2
Vs.
1.Vellathai ... Respondent/Petitioner
2.Ayyathurai ... Respondent/Respondent-1

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehilces Act, 1988, to set aside the fair and decreetal order, dated 11.07.2012, made in M.C.O.P.No.123 of 2011, on the file of the Motor Accidents Claims Tribunal – Chief Judicial Magistrate, Tirunelveli and to allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.T.Selvakumaran
For R2 : Mr.S.Baskarmadhavan
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C.M.A(MD) No.911 of 2013
1.Vellathai ... Appellants
Vs.
1.Iyyathurai

2.The Branch Manager,
M/s.The Iffco-Tokyo General Insurance Co.Ltd.,
No.335/1a, V.V.Complex,
North Bye Pass Road, Tirunelveli ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehilces Act, 1988, to allow the Appeal and to enhance the award amount, in M.C.O.P.No.123 of 2011, on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate, Tirunelveli, dated 11.07.2012.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr. S.Srinivasa Raghavan
For R1 : No appearance

COMMON JUDGMENT

Both the Appeals are arising out of the same order passed in M.C.O.P.No.123 of 2011, on the file of the Motor Accidents Claims Tribunal - Chief Judicial Magistrate, Tirunelveli, dated 11.07.2012.

2.C.M.A.(MD)No.1464 of 2012 was filed by the Insurance Company and C.M.A.(MD)No.911 of 2013 was filed by the claimant.

3.Brief substance of the petition in M.C.O.P.No123 of 2011, is as follows:-

On 09.02.2011, the claimant travelled in a TATA Ace vehicle bearing Registration No.TN-76-W-6244, that belong to the first respondent as a load woman, the vehicle was parked by the driver for the purpose of drinking water. When the claimant climbed back the vehicle, the driver moved the vehicle in a negligent manner and the claimant fell down and sustained injuries. The claimant was admitted in Sankarankovil Government Hospital and then she was shifted to Tirunelveli Government Hospital. She took treatment as inpatient for 15 days. The claimant claimed a sum of Rs.5,00,000/- as compensation.

4.Brief substance of the counter filed by the second respondent in M.C.O.P.No123 of 2011, is as follows:-

The accident took place due to the negligence of the claimant. The claimant travelled as a gratuitous passenger in a goods vehicle. The first respondent is not having valid driving license. Age, Profession, income, mode of accident, injuries and treatment expenses are all denied.

5.On the side of the petitioner, three witnesses were examined as P.W.1 to P.W.3 and Six documents were marked as Ex.P1 to Ex.P6. on the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and Eight documents were marked as Ex.R1 to Ex.R8.

6.After hearing both sides, the Tribunal awarded a sum of Rs.1,47,000/- as compensation. Against the same, the Insurance Company preferred an Appeal in C.M.A.(MD)No.1464 of 2012, on the following grounds:-

(i) The Tribunal failed to consider that the injured person is only a gratuitous passenger travelling in a goods carrier and the Insurance Company is not liable to pay compensation.

(ii)Without considering the judgments of the Hon'ble Supreme Court, in Asharani's case, Bommidi Subbathayammal's case, Rathani's case and Choletti Barathamma's case, the Tribunal has fixed the liability on the Insurance Company.

(iii)The claimant is not a load woman or the employee of the owner of the vehicle. For violation of the policy conditions, the Insurance Company is to be exonerated.

7.Against the award amount, the claimant filed an Appeal in C.M.A.(MD)No.911 of 2013, on the following grounds:-

(i)The Tribunal ought to have calculated the loss of income for a period of twelve months. The claimant was not able to do the Collie work for a period of twelve months.

(ii) The Tribunal ought to have granted a sum of Rs.50,000/- towards loss of amenities.

(iii)The Tribunal ought to have granted a sum of Rs.10,000/- towards Transport expenses and Rs.50,000/- towards pain and suffering.

(iv)The Tribunal ought to have fixed the compensation as per the judgments reported in 2011(2) TNMAC 62 and 2011 (1)TNMAC -537 SC.

(v)The Tribunal ought to have granted a sum of Rs.50,000/- towards extra nourishment and Rs.50,000/- towards attendance charges.

8.On the side of the Insurance Company, it is stated that the compensation has to be paid only by the owner as the claimant has travelled in the goods carrier as an authorised person. Even in the claim petition in Column -4, the claimant was described only as a Collie not as a load woman. No evidence was ever adduced by the claimant that she worked as a load woman. The burden is on the claimant to prove that she travelled as a loan woman. In this regard, the following judgments are cited before the Tribunal:-

1.2005 ACJ-1801 [M.V.Jayadevappa and another Vs. Oriental Fire and General Insurance Company Limited and others]

2..2012-1-TNMAC-89 (DB) [Royal Sundaram Alliance General Insurance Company Limited Vs. P.Ayyakannu]

3.2009-2-TNMAC-383 (DB) [New India Assurance Company Limited Tiruppur Vs. Pushpavathy and others]

Even then, the Tribunal has come to a wrong conclusion regarding the fixation of liability.

9.On the side of the claimant, it is stated that six persons can travel in the goods carrier as load men. P.W.1 has deposed that she has gone for harvesting Corns and returned with the Corn bags. There is policy coverage for loan men and hence, the Insurance Company is liable to pay compensation. On the side of the claimant, it is further stated that there is seating for three in a TATA Ace vehicle and the claimant travelled as a load woman and the Insurance Company is liable to pay compensation.

10. P.W.1 and P.W.4 were examined by the Insurance Company. The petitioner is the only claimant in the accident. In the policy, Ex.R4, it is clearly stated that the seating capacity is Three. R.W.2 has deposed that load woman can travel in a goods carrier. In the charge sheet, it was stated that the claimant travelled as a load woman. In the above circumstances, it is decided that fixing liability on the Insurance Company is proper.

11.On the side of the Insurance Company, it is stated that fixing of compensation under various heads is excessive. On the side of the claimant, it is stated that the compensation fixed is very low and it has to be enhanced. On the side of the claimant, it is stated that there were fractures on the right hand and on the right leg of the claimant and Rs.3,000/- has to be fixed for 1% of the Disability. A judgment of this Court reported in 2013-2-TNMAC-583 [National Insurance Company Limited Vs. G.Ramesh and another], is cited. On the side of the claimant, it is further stated that there was permanent disability and the Tribunal has to fix loss of income by applying multiplier method.

12.On the side of the Insurance Company, it is stated that the accident took place in the year 2011 and the ratio of income fixed by the Tribunal is correct. The loss of income was calculated as Rs.4,000/- per month for ten months, which is reasonable, as the disability is only partial permanent disability.

13.The accident took place in the year 2011. As per the judgments reported in 2011-1-ACJ-1 [Rajkumar Vs. Ajay Kumar and another], 2013-2-TNMAC-583 [National Insurance Company Limited Vs. G.Ramesh and another], it is decided that the claimant is eligible to get Rs.3,000/- per percentage of disability. For 45% of the disability, the claimant is entitled to Rs.1,35,000/- (Rs.3,000/- X 45=Rs.1,35,000/-) as compensation and compensation fixed by the Tribunal under all other heads, ie. For Transportation - Rs.3,000/-, For extra nourishment - Rs.4,000/-, For pain and suffering - Rs.10,000/-, Loss of income for ten months calculated as Rs.40,000/-, is reasonable. In total, the claimant is entitled to get Rs.1,92,000/- as compensation.

14.Hence, the Civil Miscellaneous Appeal filed by the Insurance Company in C.M.A.(MD)No.1464 of 2012 is dismissed and the Appeal filed by the claimant in C.M.A.(MD)No.911 of 2013 is partly allowed and the award is enhanced from Rs.1,47,000/- to Rs.1,92,000/-.

15.The Insurance Company is directed to deposit Rs.1,92,000/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the amount, after deducting amount, if any, already received by her. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

Ls

To

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

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+2 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-27116 & 27117[F] dated 24/08/2021)

Judgment made in
C.M.A(MD) Nos.1464 of 2012 and 911 of 2013
24.08.2021

KS(CO)
GC(27.10.2021) 5P 6C