IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM:

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.1467 and 179 of 2023
and C.M.P.No.15055 of 2023

C.M.A.No.1467 of 2023:

TATA AIG General Insurance
Company Limited,
No.403, L.Pandian Road, 2nd Floor,
Somsan Towers, Chennai – 600 008. ... Appellant

Versus

1.Y. Elson Babu @ Elson

2. A.Deepa ... Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 19th day of September, 2022 made in M.C.O.P.No.157 of 2015, on the file of the Motor Accident Claims Tribunal (Subordinate Judge's Court) Tiruttani.

For Appellant : Mr. K. Vinod

For Respondents : R1 - Mr.K.Varadha Kamaraj
R2 – Ex-parte

C.M.A.No.179 of 2023

Y.Elson Babu ...Appellant

Versus

1. A.Deepa
2. Tata AIG General Insurance Company Limited,
   No.403, L.Pandian Road, 2nd Floor, Somsan Towers,
   Chennai – 600 008. ...Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 19.09.2022 made in M.C.O.P.No.157 of 2015, on the file of Motor Accident Claims Tribunal, (Subordinate Judge) Tiruttani.

For Appellant : Mr. K. Varadha Kamaraj

For Respondents : R1 – Exparte
R2 – Mr.K.Vinoth

COMMON JUDGMENT

(***Both these appeals arise out of the same award and hence these appeals are disposed of by this Common Judgment. For the sake of convenience, parties are referred to as per their rank in the claim petition)***

C.M.A.No.1467 of 2023 has been filed by the Insurance Company, challenging the finding with regard to their liability.

2. C.M.A.No.179 of 2023 has been filed by the claimant/injured seeking enhancement of the compensation awarded by the Tribunal.

3. The claimant filed the petition seeking compensation, stating that on 15.04.2015, at about 8.00 a.m, while he was travelling in a Tata Ace vehicle on a National Highway, the driver of the vehicle drove it in a rash and negligent manner, as a result of which the claimant/injured who travelled in the vehicle had fallen down on the road and sustained injuries.

4. Before the Tribunal, the Insurance Company filed a counter, stating that the driver of the Tata Ace vehicle had no valid driving license to drive the said goods vehicle; that he had license only to drive light motor vehicle at the time of the accident; that the claimant/injured was shown as the cleaner cum loading man of the owner of the vehicle; that the insured has not paid additional premium for the cleaner; that they were not liable to pay compensation to the claimant; that in any case, the compensation claimed by the injured is excessive and hence, prayed for dismissal of the claim petition.

5. The owner of the offending vehicle remained ex-parte before the Tribunal.

6. Before the Tribunal, the claimant examined three witnesses as P.W.1 to P.W.3 and marked five documents as Exs.P1 to P5. The Insurance Company examined R.W.1 to R.W.3 and marked seven documents as Exs.R1 to R7.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the driver of the TATA Ace vehicle and directed the Insurance company to pay a compensation of Rs.6,93,655/- to the claimant.

8. Learned counsel for the Insurance Company submitted that though the finding of the Tribunal is that the claimant may not be a cleaner, the Tribunal had erroneously observed that he is entitled to compensation under the Motor Vehicles Act, 1988; that earlier there was an award in M.C.O.P.No.157 of 2015 on 13.01.2018; that the Insurance Company had

challenged the said award on the ground that there was no evidence let in to show that the claimant was a cleaner; that this Court in C.M.A.No.1183 of 2018, after hearing the parties had remanded the matter back to the Trial Court to ascertain if the claimant was the cleaner in the vehicle which met with the accident; that thereafter, the claimant examined two witnesses as P.W.2 and P.W.3, to prove that he was a cleaner; that their evidence cannot be accepted; that the Insurance Company had examined R.W.1 and had also filed an Investigation Report – Ex.R9, to show that the claimant was employed in a private company in Coimbatore and never worked as a cleaner/employee under the insured; that the address of the claimant is shown as Coimbatore which also confirms the fact that the claimant would not have worked as a cleaner at Vellore; and that the finding of the Tribunal awarding compensation has to be set-aside and prayed for allowing the C.M.A.No.1467 of 2023.

9. Though notice has been served on the first respondent, none has entered appearance on her behalf.

10. Learned counsel for the claimant praying for enhancement of compensation submitted that P.W.2 and P.W.3 had categorically stated that the claimant was working as a cleaner; that nothing has been elicited in the cross-examination to disbelieve their evidence; and that R.W.3, who is the Private Investigator of the Insurance Company, cannot be believed in the absence of any independent evidence adduced to prove that the claimant was working in Coimbatore. The learned counsel further submitted that the award of compensation is also meagre, considering the nature of injuries suffered by the claimant; and that the Medical Board has assessed the disability as 98% and hence prayed for enhancement of compensation.

11. The questions involved in the instant appeals are as follows:

(a) Whether the Tribunal was right in holding that the claimant is entitled to compensation?

(b) Whether the Tribunal has awarded just and reasonable compensation?

12. As regards the first question, it is seen that the claimant had examined P.W.2 and P.W.3, to show that the claimant was working as a

cleaner. P.W.2 and P.W.3 are the drivers of the vehicle. Their evidence is cogent, and nothing has been elicited in the cross-examination to disbelieve their evidence. The Insurance Company, on the other hand, had examined R.W.3/the Special Investigator and filed his report as Ex.R9. R.W.3 had stated that the claimant was not working as a cleaner and was working in a private concern. The evidence of R.W.3 is based on some information said to have been collected by him. However, the evidence of R.W.3 is not a direct evidence and it is in the nature of hearsay. The Insurance Company had not examined any witness to prove that there was any other witness who had direct knowledge about the employment of the claimant in any other concern. In such circumstances, this Court is of the view that, through the evidence of P.W.2 and P.W.3, the claimant had established that he was working as a cleaner.

13. As regards compensation, it is seen that the claimant was examined by the Medical Board. The Medical Board had assessed the disability at 98% and issued Ex.P5 – disability certificate. Considering the circumstances of this case and the nature of injuries sustained by the claimant, this Court is of

the view that the functional disability can be fixed at 60%. However, the question is whether the claimant is entitled to compensation under the Workmen Compensation Act, 1923, or the Motor Vehicles Act, 1988.

14**.** It is seen from the Insurance Policy that no additional premium was paid for the cleaner. However, the cleaner who is employed under the insured is entitled to compensation under the Workmen's Compensation Act. The wages fixed by the Central Government at the relevant point of time is Rs.8,000/-. Since the injured was aged 36 years at the time of accident, the factor applicable is 194.64. The claimant sustained injuries, and therefore, 60% of his Pay has to be taken for computing the "Loss of Income". As stated earlier, he had suffered 60% functional disability, therefore, he would be entitled to compensation in the following manner:

Rs.4,800/- (Rs.8,000/- X 60/100) X 60/100 X 194.64 – Rs.5,60,563/-

Further, he would be entitled to Rs.2,70,155/- towards Medical Expenses. He would not be entitled to compensation under any other head. The interest would be 12% per annum for compensation under the Workmen's Compensation Act. Therefore, the claimant would be entitled to Rs.8,30,718/- together with interest @ 12 % p.a., from 15.05.2015 (one month from the date of the accident) till the date of payment.

15. In the result:

(i) C.M.A.No.1467 of 2023 is dismissed by fixing the compensation under the Workmen's Compensation Act.

(ii) C.M.A.No.179 of 2023 is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.6,93,655/- to Rs. 8,30,718/- together with interest @ 12 % p.a., from 15.05.2015 (one month from the date of accident) till the date of payment.

(iii) The 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 eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount, with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected miscellaneous petition is closed. The claimant is directed to pay necessary court fee, if any on the enhanced award amount.

08.09.2023

Index : Yes/No
NCC: Yes/No
dk

Copy to:-
1.The Subordinate Judge,
Tiruttani.

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

SUNDER MOHAN, J.

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