IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2232 of 2014

K.Periyasamy ... Appellant

Vs.

1.M.Madeswaran

2.IFFCO Tokio General Insurance Company Ltd.,
Tulsi Chambers
No.195, TV Samy Road (W)
R.S.Puram
Coimbatore
Branch Office:
Opp: Fairlands Police Station
Alagapuram Post
Salem-16. ...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in MCOP.No.233 of 2006, dated 17.09.2009 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Salem.

For Appellant : Mr. G.Pugazhenthi

For Respondents : Ms.K.Saraswathi
for Mr.C.R.Krishnamoorthi for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the award dated 17.09.2009 made in M.C.O.P.No.233 of 2006 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.I, Salem, seeking enhancement of compensation.

2. According to the appellant/claimant that on 08.12.2005 at about 10.00 hours, he was travelling, as a pillion rider in Bajaj M80 two wheeler bearing Registration No.TN-30-A-3859, which was ridden by one Rajasekar, on Salem-Ellam Pllai Main Road. When they were nearing Pathampatty Thirumurthy House, a motorcycle bearing Registration No.TN29-Q-6158 'Yamaha Crux', which was owned by the first respondent and insured with the second respondent, came in a rash and negligent manner and hit their vehicle. Due to the impact, he along with rider of his two wheeler were thrown away from the bike and they sustained grievous injuries. Subsequently, the claimant took treatment as inpatient over a month wherein his right leg got amputated and thereafter, he took continuous treatment as out-patient at various Hospitals.

3. It is his further case that at the time of the accident, he was a power-loom weaver and earning Rs.5,000/- per month. Due to the accident, he was not able to continue his work. Hence, he made a claim of Rs.10,00,000/- as compensation.

4. The second respondent/Insurance Company filed counter and denied all the averments made by the claimant, particularly, denied the manner of accident as alleged by the claimant. It is stated that due to the negligent act of the rider of the Bajaj M80, the accident had occurred. The Insurance Company is not liable to pay compensation to the claimant. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimant, he examined himself as PW1 and also examined the Doctor, who gave disability certificate, as PW2 and marked Exs.A1 to A5. On the side of the Insurance Company, RW1 was examined and Exs.B1 to B7 were marked.

6. The Tribunal after considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to rash and negligent driving of the rider of the motorcycle bearing Registration No.TN29-Q-6158 Yamaha Crux belonging to the first respondent. Since the rider of the motorcycle bearing Registration No.TN29-Q-6158 did not possess valid driving licence, the Tribunal directed the first respondent/owner of the vehicle to pay a sum of Rs.1,00,000/- as compensation to the appellant.

7. Not being satisfied with the award of the Tribunal, the appellant has come forward with the present appeal seeking enhancement of compensation and against finding absolving the liability of the Insurance Company of offending vehicle.

8. Heard the learned counsel for both sides and perused the materials placed on record.

9. The learned counsel appearing for the appellant/claimant would submit that without any basis or any evidence, the Tribunal has arrived its conclusion that there is a violation of policy condition on the ground that the rider of the two wheeler in which the appellant was travelled as a pillion rider was not having driving licence. Similarly the quantum fixed for the compensation is also very meagre and no 'multiplier' method was adopted to arrive the loss of income.

10. The learned counsel for the second respondent/Insurance Company would submit that the Insurance Company examined a witness of the Insurance Company, who deposed that in spite of notice to the driver/owner of the two wheeler, in which the appellant travelled, to produce the driving licence, the same was not produced. Hence, the trial Court has rightly come to the conclusion that the driver of the motor cycle was not having valid licence. Hence, the Insurance Company was absolved from liability and the same is proper.

11. It is seen from the records that the second respondent/Insurance Company have issued a letter calling upon the licence details about the offending vehicle and the same was received by the rider of the two-wheeler as well as the owner of the vehicle. The acknowledgement cards were marked as Ex.P6 and Ex.P7. After receiving the legal notice as well as the letter of the Insurance Company, both the rider of the vehicle and the owner of the two-wheeler have not given any reply. Based on the above documents and after recording the evidence of the Insurance Officials in support of the their claim, the Tribunal has accepted the case of the Insurance Company that the rider of the vehicle was not having any valid driving licence at the time of occurrence. The Insurance Company has not taken any steps to examine the official from the Regional Transport authority, who is the authorised Officer to issue the driving licence. Even though, the Insurance Company has taken steps to gather information regarding the driving licence from the driver and owner of the offending vehicle, the failure to examine the official from the Regional Transport Office is fatal to their case. Without examining the Regional Transport Official, their efforts to gather the information regarding the driving licence alone is not sufficient, to prove that the rider was not possessing the driving licence at the time of the accident.

12. The Tribunal has failed to note the fact that the injured is the third party in respect of the Insurance Company of the offending vehicle i.e., yamaha crux and the Insurance Company has not disputed the negligent Act of the driver of the Motorcycle bearing registration number TN-29-Q-6158 belonging to the first respondent and insured with the second respondent / Insurance Company.

13. If there is violation of policy condition with regard to non-possession of the valid driving licence, pay and recovery to be ordered. Considering the fact that the injured is a third party, applying the principle laid down by the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Swaransingh and others*** reported in ***2004 (3) SCC 297,*** the Tribunal ought to have followed the principle of 'pay and recover', but, this aspect has not been considered by the Tribunal.

14. This Court is of the view that the injured in this case is a third party as far as the owner and the Insurance Company of the offending vehicle is concerned. Therefore, I am inclined to modify the award to the extent that the second respondent is liable to pay the compensation at the first instance and entitled to recover the same from the owner of the vehicle.

15. With regard to the quantum of compensation, the Tribunal has awarded a total compensation of Rs.1,00,000/- by granting Rs.1,000/- per percentage of injury, for the case of amputation. It is settled law that for the case of amputation is concerned, the proper method of granting compensation by adopting multiplier method. In this case, Ex.A4 is the disability certificate, which was marked by PW2/Doctor, who has assessed the disability of the appellant and the following injuries are given hereunder:

> "*(i) Loss of right lower limb 15cm from the level of Trochawtez, the above knee amputation up to upper 1/3rd of thigh.*
> *(ii) He is unable to walk independently and using stick for the walking purpose*
> *(iii) Unable to do manual work & unable to climb stairs & ups & downs."*

The doctor assessed the permanent disability at 85%. As per the Ex.A3-discharge summary, the injured was admitted to the hospital on 08.12.2005 and discharged on 04.02.2006. He has subsequently undergone treatment regularly till 21.08.2006. This is the case of amputation and the claimant has lost his right leg above the knee up to upper 1/3rd of thigh. In the case of ***Rajkumar vs Ajay kumar and another*** reported in ***2011 (1) SCC 343,*** the Hon'ble Apex Court held that before applying the disability factor for determination of compensation, the age, avocation of the claimant and circumstances of the case should be considered. This Court is of the view that the loss of earning capacity of the claimant would be 60% and accordingly the claimant is entitled to the compensation for the loss of earning capacity by adopting multiplier method. The accident has occurred in the year 2005 and the notional income fixed by this Court for the year 2005 is Rs.4,500/-. The claimant was aged about 55 years at the time of accident. Therefore, the claimant is entitled for future prospects as held by the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others*** reported in ***(2018) 4 SCC 571*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd.,*** reported in ***2020 SSCR 299, 2020 ACJ 2159 Website*** and accordingly, 10% is awarded as future prospects. The multiplier is applied as '11', by following ***Sarla Verma and others*** Vs. ***Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298 SC : 2009 (6) SCC 121***. Loss of earning capacity is assessed as follows: Rs.3,92,040/- [Rs.4,500/- + Rs.450/- (10% of Rs.4,500/-) = Rs.4,950/- X 12 X 11 X 60%]

16. For loss of income during the treatment period, this Court is inclined to grant four months wages and accordingly, Rs.18,000/- (Rs.4,500/- X 4) is awarded under this head. The Tribunal has not awarded any amount of compensation under the heads 'Loss of amenities, Pain and Sufferings, Extra Nourishment, Attender Charges and Transportation Charges". Hence, this Court awards a sum of Rs.25,000/- towards loss of amenities, Rs.30,000/- towards 'Pain and Suffering', Rs.10,000/- towards Extra Nourishment, Rs.10,000/- towards attender charges and Rs.5,000/- towards transportation charges.

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability	Rs.1,00,000/-	----	Rejected
2.	Loss of earning capacity	---	Rs. 3,92,040/-	Granted
3.	Loss of income during treatment period	---	Rs.18,000/-	Granted
4.	Loss of ameinities	----	Rs.25,000/-	Granted
5.	Pain and Sufferings	----	Rs.30,000/-	Granted
6.	Extra Nourishment	----	Rs.10,000/-	Granted
7.	Attender Charges	----	Rs.10,000/-	Granted
8.	Transportation Charges	----	Rs.5,000/-	Granted
	Total	**Rs.1,00,000/-**	**Rs.4,90,040/-**	**Enhanced by Rs.3,90,040/-**

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,00,000/- is hereby enhanced to Rs.4,90,040/- [Rupees Four Lakhs Ninety Thousand and Fourty only] together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The Second Respondent -Insurance Company is directed to deposit the amount awarded 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.233 of 2006 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.1, Salem, at the first instance and recover the same from the owner of the vehicle. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

22.08.2023

stn/av
Index : Yes / No
Speaking Order: Yes / No
Neutral Citation Case : Yes/No

To

1. The Motor Accident Claims Tribunal,
   Fast Track Court No.I, Salem.

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

K.RAJASEKAR, J.

stn/av

C.M.A.No.2232 of 2014

22.08.2023