IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3129 of 2019

Mohammed Rafi ... Appellant

Versus

1.Paul Pandiyan

2.The United India Insurance Company Ltd.,
Third Party Claims Cell,
T.K.M Complex, Katpadi Road,
Vellore.

3.Praburaj

4.The New India Assurance Company Ltd.,
Divisional Office,
No.1, Officers Line,
C.S.I Building,
Vellore. … Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 30.04.2019 made in MACT O.P.No. 160 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Judge (FAC), Ranipet, Vellore District.

For Appellant	:	Mr.M.Sivakumar
For Respondents		
For R1	:	No such person
For R2	:	Mr.D.Bhaskaran
For R3	:	Absent affixed
For R4	:	No appearance

<u>J U D G M E N T</u>

This Civil Miscellaneous Appeal arises against the award passed by Motor Accident Claims Tribunal, II Additional District Judge (FAC), Ranipet, Vellore District, in M.C.O.P.No. 160 of 2016 on 30.04.2019.

2. The claim petitioner is the appellant herein filed the above appeal on the point of quantum as well as liability.

3. It is the case of the appellant that on 08.11.2015 at about 17.00 hours, when the appellant was travelling in a Hyundai Verna car bearing Regn.No.TN-01-AR-1444 on Trichy to Chennai National Highways road

near Ramadass Nagar house, the driver of the car drove it in a very rash and negligent manner and hit the Omni bus bearing Regn.No.TN-38-BK-9499. Hence, the accident occurred, as a result of which, the petitioner sustained Diaphragmatic Rupture left side, Distal Shaft of Humerus fracture and Lower pole Splenetic laceration and sustained injuries in all over the body. Hence, the claim petition.

4. Before the Tribunal, on behalf of the claimants, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P10 were marked and on the side of the Respondents R.W.1 was examined and no document was marked.

5. On consideration of both oral and documentary evidence, the Tribunal fixed the liability on the part of the 1st respondent and awarded compensation as follows;-

Sl.Nos.	***Head***	***Compensation***
1.	Loss of income due to disability	Rs.1,94,400/- (9000x12x18x10%)
2.	Pain and suffering	Rs.25,000/-
3.	Medical expenses	Rs.3,51,875/-
4.	Loss of earning during the period of treatment	Rs.18,000/- (9000x2=18000)

5.	Transportation	Rs.10,000/-
6.	Attender charges	Rs.5000/-
7.	Extra nourishment	Rs.10,000/-
	Total	**Rs.6,14,275/-**

The said sum was directed to be deposited by the 1st respondent with interest at the rate of 7.5 % per annum from the date of numbering of the petitioner till the deposit of compensation.

6. Learned counsel for the appellant / claimant submitted that the learned Judge failed to note that the claim petition was filed by the claimant with the specific policy number for the vehicle involved in the accident as Policy No.106952935 for the period from 02.12.2014 to 01.12.2015 in respect of a Verna car vehicle belongs to the 1st respondent. Therefore, the Tribunal ought to have consider the above aspect which has been strengthened in the M.V.Report under Ex.P6. Therefore, the finding regarding the vehicle have no insurance policy is unsustainable in law. The Tribunal failed to note that once the insurance policy number was given by the claimant or the party it is the duty cast upon the insurance company to produce the policy before the Court for proper adjudication. In the instant case, the claimant has specifically given the policy number, despite of which

the 2nd respondent insurance company has not produced the policy before the trial Court but it was not denied by existence of the policy and validity of the policy. Therefore, the liability of the insurance company cannot be exonerate. The learned Judge failed to note that the M.V Report marked Ex.P6 have categorically disclosed that the policy number and its owner, at the time of accident. Therefore, the Tribunal erred in fixing liability on owner, as if no insurance policy was produced and the same is liable to be set aside and fixing the liability on 2nd respondent insurance company. The Tribunal awarded Rs.25,000/- towards pain and suffering, Rs.10,000/- towards transportation and Rs.10,000/- extra nourishment which are very meagre and it has to be enhanced.

7. The learned counsel for the 2nd respondent, on the other hand, submitted that the order of the Tribunal is fair and justified and it does not require any interference by this Court.

8. Heard the learned counsel appearing for the parties and perused the records.

9. On the point of liability, based on the oral and documentary evidence, the Tribunal had come to the conclusion that the alleged accident occurred due to rash and negligent driving of the driver of the car and fixed the liability on the 1st respondent to pay the compensation. On perusal of records placed before this Court revealed that at the time of accident there was insurance coverage for the offending vehicle and hence, this Court is inclined to fix the entire liability on the 2nd respondent insurance company to pay the compensation.

10. On the point of quantum, the Tribunal awarded Rs.25,000/- towards pain and suffering, Rs.3,51,875/- towards medical expenses, Rs.10,000/- towards transportation, Rs.10,000/- towards extra nourishment and Rs.5000/- towards attender charges, which appears to be just and reasonable and the same are hereby confirmed. The Tribunal has awarded Rs.1,94,400/- towards loss of income due to disability, which appears to be inappropriate and hence, this Court is inclined to remove the compensation awarded under the head loss of income due to disability. Considering the nature of disability sustained by the appellant, this Court is inclined to grant

Rs.40,000/- (10x4000) towards permanent disability. The Tribunal awarded Rs.18,000/- towards loss of earning during the treatment period, which appears to be lower side and hence, this Court is inclined to enhance the same to Rs.50,000/- (10,000 x 5 = 50,000).

11. In the light of the said discussions, the modified award is as follows:

Sl.Nos.	***Heads***	***Amount***
1.	Permanent disability	Rs.40,000/- (10x4000)
2.	Pain and suffering	Rs.25,000/-
3.	Medical expenses	Rs.3,51,875/-
4.	Loss of income during treatment period	Rs.50,000/- (5x10,000)
5.	Transportation	Rs.10,000/-
6.	Attender charges	Rs.5000/-
7.	Extra nourishment	Rs.10,000/-
	Total	**Rs.4,91,875/-**

Accordingly, the amount awarded by the Tribunal is modified from Rs.6,14,275/- to Rs.4,91,875/- together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation.

12. The 2nd respondent / Insurance Company is directed to deposit the modified award amount i.e., Rs.4,91,875/-, less the amount already paid, if any together with interest at 7.5% per annum from the date of petition till date of deposit and costs to the credit of M.C.O.P.No.160 of 2016 on the file of the Motor Vehicle Accident Claims Tribunal, II Additional District Judge (FAC), Ranipet, Vellore District, within a period of six(6) weeks from the date of receipt of a copy of this order.

13. On such deposit, the appellant/claimant is permitted to withdraw the modified award amount, on due application.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

26.06.2023

Index:yes/no
Internet:yes/no
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To

The II Additional District Judge,
Motor Accident Claims Tribunal,
Ranipet, Vellore.

A.A.NAKKIRAN.J.,

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C.M.A.No.3129 of 2019

26.06.2023