IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.585 of 2017

Krishnan ... Appellant/Petitioner

Vs

1.Palanivel Gounder

2.The Divisional Manager
Sri Ram General Insurance Co.Ltd.,
Mookambika Complex, 2nd Floor,
No.4, Lady Desika Road,
Near Alwarpet Signal,
Mylapore, Chennai-600 004. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgement and Decree dated 02.12.2016 made in M.C.O.P.No.291 of 2015 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge, Triupattur).

For Appellant ... M/s.V.Parivallal
For Respondents ... Notice not in ready [R1]
... Mrs.R.Sreevidhya [R2]

JUDGMENT

Challenging the impugned award dated 02.12.2016 passed by the Motor Accidents Claims Tribunal, Special Subordinate Judge, Triupattur in M.C.O.P.No.291 of 2015, the claimant has filed the present appeal .

2. It is the case of the claimant that on 22.05.2015, when the claimant was travelling along with the vegetables in Tata Ace Car bearing Reg.No.TN 59 AE 4676, the driver of the car driven in a rash and negligent manner which resulted in the vehicle turning upside down and due to the said accident, the petitioner sustained fracture in his right hand and grievous injuries all over the body for which he took treatment and he is still continosly taking treatment. Therefore, claiming compensation on account of the loss of earnings and for the medical expenditure and also under various heads, the claim petition was filed by the claimant.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P-1 to Ex.P-11. On the side of the respondents, R.W.1 was examined and no documents were marked. After considering all the oral and

documentary evidence, the Tribunal had awarded the compensation amount of Rs.1,18,500/- to the claimant. Aggrieved by the said award, the claimant has filed the present appeal.

4. Learned counsel appearing for the claimant submitted that though the 1st respondent is the owner of the offending car and the said vehicle being duly covered under a policy with the 2nd respondent, both the insurer and the insured are jointly and severally liable to pay the compensation to the claimant so long as the policy is valid. However, the Tribunal without properly adjudicating the issue has fastened the liability wholly against the 1st respondent which is not sustainable. Insofar as the compensation awarded, though the Tribunal has assessed the disability at 45% however, by adopting the percentage method, the Tribunal has fixed only Rs.2,000/- per percentage of disability which is on the lower side considering the fact that the accident had happened in the year 2015. Further, the compensation awarded under other heads is also meagre which requires enhancement. Accordingly, he prays for allowing the Appeal.

5. Per contra, the learned counsel appearing for the 2nd

Respondent/Insurance Company submitted that the said vehicle claims to have been covered under a valid insurance policy, at the time of accident, the driver of the said vehicle was not in possession of valid driving licence which is in violation of policy conditions. Further, when the Tribunal has accepted that it is the driver who had driven the vehicle in a rash and negligent manner which was the cause for the said accident, the Insurance Company is not liable to pay any compensation to the claimant. Insofar as the claim for enhancement of compensation, the Tribunal by considering all the relevant documents, has rightly fixed the quantum of compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the claimant as well as the 2nd Respondent/Insurance Company and perused the materials available on record.

7. The factum of the accident is not disputed by the parties and so also the injuries suffered by the claimants. Therefore, this Court is not entering into the said aspect. However, the claimant had challenged the liability as well as

the quantum of compensation awarded by the Tribunal.

8. On the question of compensation, the Tribunal has fixed the disability at 45% on the basis of the Ex.P-9 the disability certificate and has awarded a sum of Rs.90,000/- (45% * Rs.2,000/-) under the head permanent disability by adopting percentage method. However, on perusal of Ex.P-9 and also the other records which have been placed before this Court, this Court feels that the partial permanent disability could be safely fixed at 40%. Accordingly, the percentage of disability suffered by the claimant is fixed at 40%.

9. Coming to the question of percentage method, this Court, on going through the injuries as also the disablement suffered by the claimant, is satisfied with the adoption of percentage method. However, the amount awarded per percentage of disability is on the lower side and considering the fact that the accident happened in the year 2015, this Court feels that a sum of Rs.4,000/- per percentage would be the appropriate amount that should be fixed. Accordingly, this Court fixes a sum of Rs.4,000/- per percentage of disability and the compensation amount under the head Permanent disability

stands enhanced to a sum of Rs.1,60,000/- (40% * Rs.4,000/-).

10. Insofar as the aspect of negligence and liability is concerned, the Tribunal has found that the 1st Respondent's vehicle was duly covered by the contract of insurance with the 2nd Respondent/Insurance Company. Further, the Tribunal has categorically held that the appellant had not travelled as an occupant in the vehicle but had travelled on the back side sitting over the vegetables. There is no authorization from the owner of the vehicle which has been placed by the claimant to substantiate that he was travelling under due authority. In the absence of any material, the Tribunal had come to a conclusion that the claimant was a gratuitous passenger and therefore, the terms of the policy does not cover the gratuitous passenger and hence there is no necessity for the Insurance Company to indemnify the insured as a gratuitous passenger. In such view of the matter, the Tribunal has directed the 1st Respondent/Owner of the vehicle to pay the compensation to the claimant. In the absence of any material to show that the claimant was not a gratuitous passenger, the finding recorded by the Tribunal with further direction to the 1st Respondent to pay the compensation cannot be found fault with.

11. Further, the Tribunal had awarded a sum of Rs.20,000/- towards Pain and sufferings; Rs.3,500/- towards Transportation and Rs.5,000/- towards Extra nourishment. This Court finds that the compensation awarded under the heads pain and sufferings, transportation & extra nourishment is just and reasonable and does not require any interference.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

S.No	**Head of Compensation**	**Amount awarded by Tribunal**	**Amount awarded by this Court**
1.	Permanent Disability	45% x Rs.2000/- =Rs.90,000/-	**40%x Rs.4000/- =Rs.1,20,000/-**
2.	Pain and suffering	Rs.20,000/-	Rs.20,000/-
3.	Transportation	Rs.3,500/-	Rs.3,500/-
4.	Extra nourishment	Rs.5,000/-	Rs.5,000/-
	TOTAL	**Rs.1,18,500/-**	**Rs.1,48,500/-**

13. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,18,500/-** to **Rs.1,48,500/-**. The 2nd respondent-Insurance Company is directed to deposit the enhanced amount to the credit of M.C.O.P.No.291 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the Appellant/claimant through RTGS within a period of two weeks thereafter. The Appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the Appellant/claimant. There shall be no order as to costs in the present appeal.

21.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal Cum
Special Subordinate Judge,
Triupattur

2.The Section Officer,
V.R. Section,
High Court, Madras.

M.DHANDAPANI, J

NHS

C.M.A.No.585 of 2017

21.11.2023