IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.2966 and 3679 of 2019
and CMP.No.21032 of 2019

R.Boominathan .. Appellant in CMA No.2966 of 2019

Shriram General Insurance Co. Ltd.,
No.6/2, Thirumala Pillai Street,
Chennai-17. ... Appellant in CMA No.3679 of 2019

Vs.

1. D.Dhatchanamoorthy

2. Shriram General Insurance Co. Ltd.,
No.6/2, Thirumala Pillai Street,
Chennai-17.

.. Respondents in CMA.No.2966 of 2019

1. R.Boominathan

2. D.Dhatchanamoorthy .. Respondents in CMA.No.3679 of 2019

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.10.2014 made in MCOP.No.1417 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (Sub Court-2) Chennai.

For Appellant : Mrs.A.Subadra in CMA.No.2966/2019
Mr.S.Dhakshinamoorthy in CMA No.3679/2019

For Respondents : Mr.S.Dhakshinamoorthy R2
R1 – Ex-parte in CMA No.2966/2019
Ms.A.Subadra For R1
R2 – died (steps due)
in CMA. o.3679 of 2019

COMMON JUDGMENT

The claimant has filed this appeal in CMA. No.2966 of 2019 seeking enhancement against the judgment and decree dated 20.10.2014 made in MCOP.No.1417 of 2013 on the file of the Motor Vehicle Accidents claims Tribunal (Sub Court-2) Chennai. In turn, the insurance company has filed another appeal in CMA.No.3679 of 2019 challenging the same award questioning the liability.

2. For the sake of convenience, the appellant in CMA. No.2966 of 2019 is referred to as "the claimant" and the appellant in CMA. No.3679 of 2019 is referred to as "the insurance company". Since the issue arises in both the appeals are one and the same, the same are disposed of by way of this common order.

3. The case of the claimant is that on 23.12.2012 at about 13.00 hrs., while the claimant was riding his motorcycle bearing registration No.TN 04

W 7650, an opposite side, an Eicher van bearing Registration No.TN 31 AB 1195 driven by its driver from the opposite direction, which was owned by the first respondent in CMA.No.2966 of 2019 and insured with the appellant herein, in a rash and negligent manner, dashed against the claimant, due to which, the claimant sustained injuries and admitted in the hospital for treatment. The claimant filed a claim petition before the Tribunal against the owner of the vehicle and insurance company claiming compensation. Before the Tribunal, on the side of the claimant, two witnesses were examined and 13 documents were marked. On the side of the insurance company, one witness was examined and three documents were marked. After adjudication, the owner of the van were set ex-parte and the Tribunal has awarded Rs.5,71,200/- to the claimant payable by the insurance company.

4. Challenging the said award, the claimant as well as the insurance company have filed the separate appeal before this Court.

5. The learned counsel for the claimant submitted that due to the accident occurred, the claimant sustained grievous injuries and at the time of

the accident, the appellant is aged about 28 years. The Doctor assessed the disability at 60% and the Tribunal has reduced the same at 50%. The appellant has lost his earning capacity due to the injuries and disability. Without considering the said aspect, the Tribunal has awarded Rs.1,50,000/- under the head of permanent disability and the Tribunal ought to have applied multiplier method for the same. The other heads awarded by the Tribunal are very low, which warrants interference of this Court.

6. The learned counsel for the insurance company submitted that the disability of 50% fixed by the Tribunal is highly excessive and other heads awarded by the Tribunal is on the higher side. Further the Tribunal has fastening the liability as against the insurance company, which is unsustainable, because on the date of the accident, there was no valid insurance policy. Therefore, the Tribunal has to fastened the liability as against the owner of the vehicle. Hence, the learned counsel prays that this Court may set aside the award and allow the appeal.

7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. The facts of the case are not in dispute. Admittedly, the accident had happened due to rash and negligent driving of the driver of the Eicher van. According to the claimant, the award passed by the Tribunal is very meager and the same has to be enhanced.

9. On perusal of the impugned order, it is seen that the Doctor has assessed the disability at 60% as disability and the Tribunal has taken into consideration the same at 50% and awarded Rs.3,000/- per percentage (50% x Rs.3000/- = Rs.1,50,000/-). The disability fixed by the Doctor would vary from doctor to doctor. The accident had happened in the year 2012, a sum of Rs.3,000/- per percentage is fixed to compute towards disability, which is perfectly in order. Further, the Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering by considering the nature of injuries sustained by the appellant, which is just and reasonable. The Tribunal has awarded a sum of Rs.65,000/-, Rs.3000/-, Rs.20,000/- towards loss of income, transportation to hospital and extra nourishment respectively, which is also just and reasonable, which does not warrant any interference. The Tribunal has elaborately assessed the issue and rightly awarded compensation in

favour of the claimant. Therefore, the appeal in CMA No.2966 of 2019 is dismissed.

10. According to the insurance company, the policy was invalid at the time of the accident. Hence, fastening the liability fixed on the insurance company has to set side and the award passed by the Tribunal is on the higher side.

11. On perusal of the impugned order, it is seen that before the Tribunal, the insurance company has marked the document Ex.R2/letter, which was written by the owner of the van to the insurance company with regard to the cancellation of the policy. However, the insurance company has not established the said letter and they have not taken any steps to examine the owner. There is no proof to show that the letter was sent by the owner of the vehicle and there is no proof to show that the intimation for cancellation of the policy was sent to the RTO. In the absence of any materials, the Tribunal has fastened the liability as against the insurance company, which does not warrant any interference.

12. For the reasons stated aforesaid, both the appeals are dismissed. No costs. The award passed by the Tribunal is confirmed. The insurance company is directed to deposit the compensation as awarded by the Tribunal with interest at the rate of 7.5% per annum from the date of petition till the date of realization, less the amount if already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, less the amount if any already withdrawn. Consequently, connected miscellaneous petition is closed.

10.11.2023

Index : Yes
Speaking Order : Yes
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To

The Motor Vehicle Accidents claims Tribunal (Sub Court-2) Chennai.

M.DHANDAPANI,J.

Rli

C.M.A.Nos.2966 and 3679 of 2019

10.11.2023