BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 09.02.2023
Delivered On: 03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.137 of 2023
and
C.M.P(MD)No.1261 of 2023

The Branch Manager,
Reliance General Insurance Company Limited,
A.V.S. Tower, Next to Seenivasa Motors,
R.S.No.181/2, 100 Feet Road,
Sundaraja Nagar, Mudaliarpettai,
Puthucherry. ... Appellant/ Respondent No.2

Vs.

1.Silvester ... Respondent No.1/ Petitioner

2.Veeramani ... Respondent No.2/ Respondent No.1

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act to set aside the judgment and decree dated 22.08.2022 passed in M.C.O.P No.127 of 2021 on the file of the Motor

Accident Claims Tribunal, Principal Subordinate Judge, Kumbakonam by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For R-1 : Mr.A.S.Mathialagan

JUDGMENT
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[Judgment of the Court was delivered by **L.VICTORIA GOWRI, J.]**

This Civil Miscellaneous Appeal is preferred against the judgment and decree dated 22.08.2022 passed in M.C.O.P No.127 of 2021 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Kumbakonam, in which the Motor Accident Claims Tribunal (in short "The Tribunal") awarded a compensation of Rs.37,68,056/- with 7.5% interest from the date of petition with cost. The appellant herein was the second respondent before the Tribunal, whereas the first respondent who was the owner of the two wheeler was the petitioner and the owner of the vehicle Bolero Pickup TATA Ace was the second respondent in the first respondent's claim petition.

2. This is a case of permanent injury causing 100% disability. The first respondent claimant herein is set to have met with an accident which took place on 02.03.2021 at 07.30 a.m. It is the case of the first respondent claimant that on 02.03.2021 at 07.30 a.m., the first respondent claimant with one Mrs.Thekkarosia Mary, his wife as a pillion rider in his motor cycle bearing Registration No.TN 61 B 4744 travelling Kumbakonam – Mayiladuthurai Main Road.

3. While he was proceeding near A.M.I. Building, a TATA Ace Van mentioned *supra*, bearing Registration No.TN 20 CB 0465, owned by the second respondent, insured with the appellant - Insurance Company, which came in the opposite direction in a rash and negligent manner, hit against the motor cycle fatally. As a result of which, the first respondent claimant, who was the rider of the motor cycle sustained severe injuries and immediately he was carried to Kumbakonam Government Hospital, from where he was referred to Thanjavur Medical College Hospital for further treatment. Since his condition became

critical, the first respondent claimant was admitted in Thanjavur Meenakshi Mission Hospital, where he took treatment as inpatient from 02.03.2021 to 05.05.2021. According to the claimant, since the accident occurred due to the rash and negligent driving of the driver of the TATA Ace Van, he is entitled for a compensation of Rs.70,00,000/-.

4. The appellant - Insurance Company filed a counter statement disputing the averments in the claim petition. It stated that the accident was caused solely because of the rash and negligent driving of the first respondent claimant. Further the counter statement stated that the driver of the TATA Ace Van did not possess driving licence at the time of accident, as such the second respondent owner had violated the policy conditions while allowing a person without holding driving licence to drive his vehicle without valid permit and fitness of the vehicle and sought to dismiss the claim petition on that ground. It is interesting to notice the submissions made by the appellant / second respondent in paragraph Nos.9, 12 and 16 of the counter statement filed before the Tribunal, wherein the appellant / second respondent has submitted that

the claim petition is filed by the legal heirs of the insured and that the claimant died in the said accident and that the legal heirs of the deceased are not entitled to file the claim petition. The counter statement categorically submitted that the accident happened only because of the negligence and rashness of the claimant on the road. That led to his untimely demise.

5. It is seen that the claimant Silvester filed M.C.O.P No.127 of 2021 and his wife Thekkarosia Mary filed M.C.O.P No.125 of 2021 and both claim petitions were taken up for a joint trial. The parties adduced oral and documentary evidence. In M.C.O.P No.127 of 2021 on the side of the claimant, Thekkarosia Mary "Pillion Rider" was examined as P.W. 1 and 49 documents were marked and on the side of the Insurance Company, one witness was examined and four documents were marked. Besides that two Court documents were also marked.

6. The Tribunal, on proper appreciation of evidence, held that the contentions raised by the appellant in para 10 of his counter statement

that the driver, namely, Mr.Dinesh, who drove TATA Ace Van at the time of accident did not possess valid driving licence was not true. The said truth that Mr.Dinesh possessed a valid driving licence at the time of the accident could be substantiated from the perusal of Exhibit A2 (online copy of the report of the Motor Vehicle Inspector dated 04.03.2021) marked through P.W.1. In furtherance to the same, the Tribunal held that the second respondent / first respondent, who is the owner of the said TATA Ace Van had properly insured the said vehicle and that the insurance policy was valid during the period from 08.08.2020 to 07.08.2021. That apart, the Tribunal fixed the liability on the driver of the second respondent / first respondent's Van by appreciating that he drove the TATA Ace in a rash and negligent manner, in an uncontrollable speed resulting in the accident, which caused grievous injury to the rider and pillion rider of the motor cycle. On that basis, the Tribunal came to the conclusion that the cause of accident was the negligence of the second respondent / first respondent's driver thereby fixing the liability on him. Inevitably, the Tribunal awarded Rs. 37,68,056/- along with interest at the rate of 7.5% per annum as compensation. Aggrieved over the findings of the Tribunal, the Insurance Company has filed this Civil Miscellaneous Appeal.

7. The learned Counsel appearing for the appellant - Insurance Company submitted that the Tribunal has grossly erred in fixing liability on the driver of the second respondent / first respondent's Van and also awarding a higher compensation to the claimant, without appreciating the facts of the case and therefore, prayed for setting aside the award passed by the Tribunal. However, the learned Counsel for the appellant could not place any reasonable explanation for the factual errors in paragraph Nos.9, 12 and 16 of the counter statement and the correctness of the claimant's contentions which could be substantiated from Exhibit A2.

8. Per contra, the learned Counsel for the first respondent claimant made submissions justifying the award passed by the Tribunal and prayed for dismissal of the appeal.

9. Heard the rival submissions made by either Counsels carefully and perused the materials available on record.

10. In the case on hand, it is only the Insurance company which has filed this appeal and it seems that claimant is satisfied with the quantum of compensation amount of Rs.34,68,056/- awarded by the Tribunal by the impugned order.

11. The short question, which arises for consideration in this appeal is whether the Tribunal was justified in fixing the liability with the driver of the TATA Ace Van owned by the first respondent / second respondent and awarding a handsome compensation to the first respondent. There is no dispute that the first respondent claimant suffered grievous injury due to the accident which took place on 02.03.2021. P.W.1, wife of the claimant, who was travelling as a pillion rider, has deposed that only due to rash and negligent driving of the first respondent / second respondent's Van, the incident had taken place. In support of the evidence of P.W.1, First Information Report (Exhibit P1)

was marked. Perusal of the evidence of P.W.1 and the First Information Report (Exhibit P1) categorically shows that the accident had taken place due to the rash and negligent driving of the driver of the second respondent / first respondent's Van. Moreover, the report of the Motor Vehicle Inspector (Exhibit P2) would reveal that the driver who drove the TATA Ace Van possessed valid driving licence at the time of the accident and the said accident was caused by him due to his rash and negligent driving. Hence, the findings of the Tribunal fixing negligence on the driver of the Van do not warrant interference of this Court.

12. Regarding quantum of compensation, it is seen that on account of the grievous injuries sustained by the claimant, his movement has been drastically curtailed and he is in vegetative stage and therefore, the Tribunal fixed disability at 100%. The Tribunal has also examined Exhibits P4 to P30 which would prove that on 02.03.2021, the first respondent / claimant was admitted at Kumbakonam Government Hospital at the first instance, from where he was shifted in 108 ambulance for better treatment to a higher Medical Centre namely,

Meenakshi Mission Hospital, Thanjavur, where he was given treatment between 02.03.2021 and 05.05.2021 as an inpatient. The Tribunal had also marked the fracture in the right shoulder, injury in the spinal cord and the defects in the left kidney of the first respondent / claimant and has also mentioned the fact that the claimant was further admitted on 20.04.2021 in S.P Hospital at Thanjavur where one of his kidneys was removed on 22.04.2021 and came to a conclusion that all the injuries mentioned *supra* was sustained by the claimant as a result of the grave accident.

13. However, though it was claimed that the claimant was an agriculturist doing groundnut business earning Rs.30,000/- per month, no documentary evidence was produced before the Tribunal to substantiate his claim. We hesitate to add that the Tribunal need not accept the request of the appellant - Insurance Company seeking to reduce the compensation in the absence of supporting material. There is no reason in the instant case for the Tribunal to ask for evidence of monthly income of the first respondent / claimant. On the other hand, going by the present

state of economy and the raising prices of domestic products, we are inclined to accept that the notional income of the claimant fixed by the Tribunal as Rs.9,000/- per month is reasonable.

14. In the instant case, it is not in dispute that the first respondent / claimant was aged about 51 years and no documents were filed to prove his employment. The Tribunal has taken the notional income as Rs. 9,000/- per month, as per the decisions in ***Syed Sathick and Others Vs. Divisional Manager, United India Insurance Company Limited (2014) 2 SCC 735*** and ***HDFC Ergo General Insurance Company Limited Vs. B.Boomi and Others (2021) 2 TNMAC 71 (MB)*** and adopted multiplier "11" as per the decision of the Hon'ble Supreme Court in ***Sarla Verma and Others Vs. Delhi Transport Corporation (2009) 6 SCC 121***. Accordingly, the Tribunal calculated the loss of income as Rs. 11,88,000/- (9000 X 12 X 11).

15. R.W.1, Manager of Meenakshi Mission Hospital, Thanjavur, has deposed evidence stating that the claimant was admitted as inpatient

in their Hospital and spent a sum of Rs.23,80,056/- towards medical expenses and to that effect, he has marked Discharge Summary (Exhibit R4). Therefore, the finding of the Tribunal that the claimant is entitled for the said medical expenses to a tune of Rs.23,80,056/- needs no interference. Besides, the Tribunal awarded Rs.1,00,000/- towards pain and suffering, Rs.20,000/- each towards nutritious food and transport expenses and Rs.60,000/- towards attending charges. In total, the Tribunal awarded Rs.37,68,056/- as compensation to the claimant. Though the learned Counsel for the appellant – Insurance Company contended that the award is on the higher side and it requires reduction to some extent, in view of the fact that the injuries suffered by him are grievous in nature and due to which, his movement has been totally affected and he is in vegetative stage, we are of the view that the Tribunal has awarded a just and reasonable compensation and we are not inclined to interfere with the award passed by the Tribunal and the same is thereby confirmed. The rate of interest fixed by the Tribunal at 7.5% per annum remains unaltered and the same is also confirmed.

16. In the result, the Civil Miscellaneous Appeal is dismissed. Since the appeal is dismissed, the appellant – Insurance Company is directed to deposit the entire award amount with accrued 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 order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

(D.K.K.J.,) **(L.V.G.J.,)**

03.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

Btr

To

1.The Motor Accident Claims Tribunal
Principal Subordinate Judge, Kumbakonam.

2.The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

Judgment made in

C.M.A(MD)No.137 of 2023

03.03.2023