IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1884 of 2021

Thimmaraj ... Appellant / Petitioner

Vs.

1. Maxi Enterprises, Bangalore
No.40/45, 3rd Main road,
Samrajpettai,
Bangalore – 560 018.

2. Bajaj Allianz General Insurance Co. Ltd.,
GE Plaza, Airport Road,
Airvada, Pune – 411 006. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 23.03.2020 passed in M.C.O.P. No. 591 of 2016 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Dharmapuri.

For Appellant	:	M/s. T.L.Thirumalaisamy
For R1	:	No Appearance
For R2	:	M/s. T.K. Premkumar

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 591 of 2016, dated 23.03.2020 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Dharmapuri.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal. The brief facts leading to filing of this appeal is as follows:

3. The injured claimant herein has travelled as a 'cleaner' in a Eicher lorry bearing Registration No.KA-01-AC-6207, which belongs to the first respondent herein, for transporting the goods of DTDC couriers from Salem to Bangalore on 19.05.2015 and the said lorry was driven by its driver in a rash and negligent manner, while the lorry reached near Thoppur Commercial Check Post at about 3:30 AM, it dashed against the on-going lorry, which resulted in accident, thereby causing severe injuries to the claimant. A criminal case was registered against the driver of the first

respondent's lorry in Cr.No.166 of 2015 under Section 279 and 337 of IPC on the file of Thoppur Police station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166 of the Motor Vehicles Act,1988.

4. The first respondent is the owner of the offending lorry has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and contended that the claimant in this case is a gratuitous passenger and there is no employee - employer relationship between the first respondent and the claimant herein and further contended that the FIR was registered belatedly after 3 days, hence the FIR could not be relied on this case. The insurance company also disputed the age, income, occupation and disability of the claimant.

5. The Tribunal after considering the evidence placed on record has held that the claimant is not an employee of the first respondent, he is a gratuitous passenger travelled in the lorry, and the insurance company is not liable to indemnify the first respondent. The Tribunal also quantified and awarded compensation for a sum of Rs.4,35,000/- to be paid by the first

respondent, who is the owner of the offending lorry.

6. Aggrieved over the award, the claimant has filed this appeal, more particularly holding the claimant as a gratuitous passenger and also for enhancement of compensation.

7. The learned counsel for the claimant submitted that there is an ample evidence placed on record, to show that the claimant is a cleaner, who travelled in the lorry at the time of transporting the courier goods. A representative of the employer was also examined before the Tribunal as P.W.3 and his evidence has not been properly considered by the Tribunal, hence prays to set aside the finding of the Tribunal, and further to direct the second respondent - insurance company to indemnify the first respondent.

8. The learned counsel for the insurance company submitted that based on the evidence placed on record, the Tribunal has rightly held that the claimant is a gratuitous passenger and there is no documents to show that he has travelled in the lorry as 'cleaner', hence the insurance company is not liable to pay any compensation to the claimant. The learned counsel to

buttress his argument has relied on the paragraph 5 of the claim petition, wherein the claimant claimed himself as a self employed and prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record.

10. In the claim petition, the claimant has stated that he is a 'cleaner' by profession and in paragraph no.10, he has stated that while travelling in the Eicher lorry as a cleaner, the accident has taken place. The FIR was lodged by his brother-in-law and it is stated that the claimant was employed by the first respondent company named Maxi Enterprises and on the said day of occurrence, he travelled in the said lorry as cleaner for transporting the courier goods from Salem to Bangalore and on the way, the occurrence has taken place. This pleading and recitals in the FIR has been reiterated by the claimant himself, who was examined as P.W.1 before the Tribunal and he has stated that he was an employee of the first respondent and on 19.05.2015, at early morning about 3:30AM, he was transporting the goods of DTDC courier from Salem to Bangalore in first respondent's lorry,

while the lorry reached near Thoppur check-post, the driver of the lorry dashed against the on-going lorry and thereby he sustained grievous injuries. He has also stated that he was a 'cleaner' by profession and was earning Rs.15,000/- per month. In the cross examination of P.W.1, it was suggested that the claimant has not travelled in the lorry, it is also suggested that there was no employee – employer relationship, and the same was denied by him.

11. To substantiate his evidence, the claimant has examined P.W.3, who has stated that he is the Manager of the first respondent firm and the claimant was working as a cleaner and was earning Rs.400/- per day and through him the authorisation letter and his identity card were marked. On perusal of the identity card, it shows that the Maxi enterprises was located in No.20, L.V. Temple Street, Balepet, Bangalore, whereas in the authorisation letter, the address of the first respondent has been stated as No.40/45, 3rd Main road, Samrajpettai, Bangalore. Based on this, the Tribunal has held that the evidence of P.W.3 is not acceptable and the claimant is not able to prove the relationship about his employment with the first respondent. P.W.3 has admitted there is a variation in the address mentioned in the identity card and authorisation letter. It was suggested to him that there was

no existence of such company in the name of Maxi Enterprises and he is helping the P.W.1 for the purpose of getting the compensation, which was denied by him.

12. On careful perusal of the pleadings and evidence of the claimant, shows that he claims that he was employed as a cleaner in the first respondent's lorry and while he travelled in the vehicle, he has sustained injuries. It is true that the claimant has not produced any identity card or any other documents to show that he is a cleaner, employed under first respondent. The evidence of P.W.3 shows that he is the manager in the first respondent's office and engaged the claimant as a cleaner. According to him, the claimant was paid Rs.400/- per day and in the cross examination, he has denied the suggestion regarding there is no such company in the name of Maxi Enterprises. The Tribunal has also failed to note the fact that, in the insurance policy of the vehicle, which is marked as Ex.P.3, issued in the name of Maxi Enterprises, Samrajpettai, Bangalore, hence the suggestion imposed by the insurance company that there is no existence of such company in the name of Maxi Enterprises does not hold water.

13. Admittedly, the respondents have examined R.W.2 - Insurance Company Official and his evidence has not proved the facts of non existence of company in the name of Maxi Enterprises and non possession of driving licence by the lorry driver. The evidence of P.W.1 and P.W.3 shows that the claimant was engaged as a cleaner in the first respondent's lorry and travelled from Salem to Bangalore for transporting DTDC Courier goods. It is true that the first respondent is the party to the proceedings but he has not come forward to defend but adduced evidence in support of the injured claimant. The evidence of P.W.3 corroborates the evidence of the P.W.1. , Ex.P.1- FIR further strengthens the case of the claimant. This Court is of the view that the rejection of P.W.3 evidence by the Tribunal is not proper, since the insurance policy is issued in the name of Maxi Enterprises stated supra, proves that the company is not a fake company and the claimant was engaged as a cleaner in the first respondent's lorry at the time of occurrence. Hence the finding of the Tribunal that the claimant is a gratuitous passenger is not proper and the same is liable to be set aside.

14. The contention of the insurance company that there is no prayer to set aside the above finding is not sustainable since the claimant has

categorically made a claim in this appeal that he is a cleaner and also the claimant sought for modification of the award, to modify the exoneration of insurance company from paying compensation. Accordingly, this Court is of the view that the second respondent – insurance company shall be liable to pay the compensation to the claimant herein.

15. The learned counsel for the insurance company has contended that the claimant is not a regular employee and he is only engaged as a temporary labour, hence he is not covered by the insurance policy. On perusal of the policy, it shows that a premium of Rs.50 has been collected under the category LL for operation and maintenance of one person. According to insurance company, the premium is applicable only for permanent employee and not for daily wager. The evidence of P.W.3 shows that the claimant was paid Rs.400/- per day but he has not stated whether the claimant is a daily wager or permanent employee, however he has stated that the claimant is a cleaner in the first respondent's lorry. Hence, this Court is of the view that the person who assist the driver in the lorry are commonly called cleaner and he assists the driver for maintaining the vehicle, hence this Court is of the view that the claimant is covered under the policy.

16. With regard to quantum of compensation, the learned counsel for the claimant submitted that the compensation awarded by the Tribunal is on the lower side and prays to enhance the same. On perusal of the medical records, it shows that the claimant was diagnosed with the following injuries "Frontal Scalp Laceration wound Debridement and suturing, ORIF for fracture B/L fronto zygomatic Complex, Fracture mandible Symphsis, fracture left zygomatic, Debridement and Reconstruction of upper lip, lower lip, Repair of facial wounds, eyelid wound" and these injuries caused disfigurement to his face and the claimant also undergone reconstruction procedure to his damaged eyelids. The Ex.C.1- disability certificate issued by the Medical Board shows that the claimant has sustained 40% partial permanent disability, hence the Tribunal has granted Rs.3,000/- per percentage of disability and awarded Rs.1,20,000/- under the head disability. This Court judgment in ***M.Chinnathambi vs. S. Deepa and another [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617],*** has awarded Rs.4,000/- per percentage of disability for the accident cases taken place from the year 2015, hence, considering the date of accident and also the age of the claimant herein, this Court is inclined to modify the award of

Rs.3,000/- per percentage of disability by the Tribunal to Rs.4,000/-, hence the total compensation granted under the head disability is modified to Rs.1,60,000/- (Rs.4,000/- x 40% of disability).

17. The Tribunal has awarded Rs.25,000/- under the head pain and suffering, considering the nature of injuries, in-patient treatment and different types of surgeries undergone by the claimant, this Court is of the view the compensation awarded under the head pain and suffering is on the lower side and the same is enhanced to Rs.50,000/-. The Tribunal has not awarded any compensation under the head loss of income during the treatment period, the medical records shows that the claimant was under in-patient treatment from 19.05.2015 to 01.06.2015 and undergone different types of surgeries, hence this Court is of the view that the claimant is entitled for two months loss of income during his disablement period. Considering the age and earlier avocation, this Court is inclined to fix Rs.10,000/- as monthly notional income of the claimant and accordingly, Rs.20,000/- is awarded as compensation towards loss of income during the treatment period. The compensation under other heads are concerned, the Tribunal has awarded a just and reasonable compensation and the same are

hereby confirmed.

18. 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	1,20,000/-	1,60,000/-	Enhanced
2.	Medical bill	2,69,000/-	2,69,000/-	Confirmed
3.	Transport to Hospital	11,000/-	11,000/-	Confirmed
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Pain and sufferings	25,000/-	50,000/-	Enhanced
6.	Loss of income during treatment period	---	20,000/-	Granted
	Total Compensation	4,35,000/-	**5,20,000/-**	**Enhanced**

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,35,000/- is hereby enhanced to **Rs.5,20,000/- [Rupees Five Lakhs and Twenty Thousand 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, excluding the default period, if any. 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.591 of 2016 on the file of the Chief Judicial Magistrate, Motor Accidents Claims Dharmapuri. 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.

30.01.2024

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

To:

1. The Chief Judicial Magistrate,
   Motor Accident Claims Tribunal,
   Dharmapuri.

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

K. RAJASEKAR, J.

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C.M.A. No. 1884 of 2021

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