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C.M.A.No.2736 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2024

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2736 of 2021

Pichaipillai

... Appellant

..Vs..

1.Murugesan

2.IFFCO Tokio General Insurance Co. Ltd.,

IFFO Towers, Plot No.3,

29, Gurgaon, Gurgaon

Hariyana-122 001.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 19.02.2020 passed in M.C.O.P No.78 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal/ Chief Judicial Magistrate, Ariyalur.

For Appellant

: Mr.N.C.Ashok Kumar

For Respondents

: Mr.M.Jayaraj for R2



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J U D G M E N T

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This appeal has been filed by the claimant seeking for enhancement of compensation.

2. Under the impugned award, the Tribunal has converted the claim filed by the appellant/claimant under Section 166 of Motor Vehicles Act, to claim under Section 163-A of Motor Vehicles Act and awarded compensation to the appellant/claimant as per Section 163-A of Motor Vehicles Act.

3. Learned counsel for the appellant/claimant contended before this Court that erroneously without any basis, the claim has been converted to one under Section 163-A of Motor Vehicles Act and erroneously, despite the appellant/claimant having sustained loss of earning capacity, the Tribunal had not adopted the multiplier method.



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4. As seen from the impugned award, the Tribunal had directed the second respondent/Insurance Company to pay the appellant/claimant a compensation of Rs.1,01,205/- being the 50% of total compensation of Rs.2,02,410/- together with interest at 7.5% per annum for the injuries sustained by the appellant as a result of an accident caused by a vehicle insured with the second respondent/Insurance Company. As seen from the impugned award, there are no reasons given by the Tribunal for converting the claim filed by the appellant/claimant under Section 166 of Motor Vehicles Act to one under Section 163-A of Motor Vehicles Act. Before the Tribunal, the appellant has also not filed any document to prove that he had suffered loss of earning capacity on account of injuries sustained by him as a result of an accident caused by the vehicle insured with the second respondent. The exhibits Ex.P1 to P11 marked on the side of the appellant/claimant are not relevant for the purpose of coming to the conclusion as to whether the appellant/claimant had suffered loss of earning capacity or not.



5. Learned counsel for the appellant during the course of his arguments submitted that the appellant is having additional documents to prove that the appellant had suffered loss of earning capacity as a result of an accident caused by the vehicle insured with the second respondent.

6. Being a welfare legislation, the appellant/claimant must be granted an opportunity to produce additional oral and documentary evidence to substantiate his contention that the multiplier method will have to be adopted for assessing the compensation of the appellant/claimant towards his loss of earning capacity. As seen from the discharge summary and the disability certificate which have been marked as exhibits P.3 and P.11 before the Tribunal, the appellant/claimant had sustained head injuries. However, only due to the fact that he did not produce the documentary evidence to prove that he had sustained loss of earning capacity, the Tribunal had not adopted the multiplier method.

7. The Tribunal under the impugned award has granted pay and recovery rights to the second respondent/Insurance Company, since the rider



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of the motorcycle insured with the second respondent was not possessing a valid driving license at the time of the accident. The fact that the rider of the motorcycle insured with the second respondent/Insurance Company was not possessing a driving license at the time of the accident is an undisputed fact. Only based on the said undisputed fact, the Tribunal under the impugned award has granted pay and recovery rights to the second respondent/Insurance Company. Eventhough this Court is inclined to remand the matter for fresh consideration, the finding with regard to the fact that the rider of the motorcycle insured with the second respondent was not possessing a valid driving license is also confirmed by this Court, the said finding cannot be altered by the Tribunal. Once the matter is sent back to the Tribunal for fresh consideration, the pay and recovery rights granted to the second respondent/Insurance Company as per the impugned award cannot also be disturbed by the Tribunal. It is also undisputed fact that the appellant/claimant was driving his motorcycle without having a valid driving license at the time of the accident and he was also under the influence of alcohol at the time of the accident.



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8. Learned counsel for the appellant would fairly submit that the appellant has not challenged the impugned award with regard to the finding rendered by the Tribunal that the appellant/claimant was not possessing a valid driving license at the time of the accident and he was also under the influence of alcohol. Therefore, the finding with regard to contributory negligence on the part of the appellant/claimant fixed at 50% is confirmed by this Court which cannot be disturbed/altered by the Tribunal once the Tribunal passes an award pursuant to the order of the remand passed by this Court.

9. Being a welfare legislation to protect the accident-victims, since the contention of the appellant had not been considered by the Tribunal under the impugned award and there is no discussion made by the Tribunal as to how the claim under Section 166 of Motor Vehicles Act was converted to a claim under Section 163-A of Motor Vehicles Act, this Court deems it fit to set aside the impugned award and remand the matter back to the very same Tribunal for fresh consideration.



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10. In the result, the impugned award dated 19.02.2020 passed in M.C.O.P No.78 of 2017 by the the Motor Accident Claims Tribunal/ Chief Judicial Magistrate, Ariyalur is set aside and the matter is remanded back to the very same Tribunal for fresh consideration on merits and in accordance with law, after affording an opportunity to both the appellant and the respondents to let in additional oral and documentary evidence in support of their respective contentions, and the Tribunal is directed to pass an award within a period of six months from the date of receipt of a copy of this judgment. However, the findings with regard to contributory negligence fixed by the Tribunal under the impugned award on the part of the appellant/claimant at 50% and grant of pay and recovery rights to the second respondent/Insurance company are hereby confirmed .

11. Accordingly, this Civil Miscellaneous Appeal stands disposed of.

No costs.

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Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order
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WEB COPY To

- 1.The Motor Vehicle Accident Claims Tribunal
Chief Judicial Magistrate
Ariyalur
- 2.The Section Officer
V.R.Section, High Court of Madras.

ABDUL QUDDHOSE, J.



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