BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1222 of 2017

Minor Seyadu Ali,
S/o.Khaja Mytheen
Through his mother and next guardian Alima
No.33, Ganesapuram North Street,
Melapalayam,
Tirunelveli. ... Appellant/Petitioner

-vs-

1. Chandiran

2. Shri Ram General Insurance Company Limited,
Through its Branch Manager,
2nd Floor, No.25, B2/1S, SRC Complex,
North Block,
Tirunelveli. ` ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree dated 08.02.2013 made in M.C.O.P.No.195 of 2011 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Tirunelveli.

For Appellant : Mr.T.Selvakumaran

For R2 : Mr.V.Sakthivel
For R1 : No appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the injured claimant challenging the award passed in M.C.O.P.No.195 of 2011, on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Tirunelveli, challenging the exoneration of the Insurance Company and for enhancement of the award.

2. The injured claimant was the pillion rider in a two wheeler and an Auto owned and driven by the first respondent and insured with the second respondent came from the opposite direction driven in a rash and negligent manner and dashed against the two wheeler. In the said accident, the injured claimant has sustained serious injuries to the extent of partial permanent disability of 45%. The claimant had claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

3. The Tribunal found that the accident has taken place only due to the negligence on the part of the Auto driver. However, the Tribunal has proceeded to exonerate the Insurance Company on the ground that the Auto driver did not possess valid driving license on the relevant date. The Tribunal

has proceeded to fix compensation at Rs.1,21,000/- (Rupees One Lakh Twenty One Thousand only) and directed the owner of the Auto to pay the said compensation. Challenging the said award, the present appeal has been filed.

4. According to the learned counsel appearing for the appellant, when the driver of the Auto did not possess valid driving license it is only a violation of policy condition and an order of pay and recovery should have been passed. The Tribunal was not right in completely exonerating the Insurance Company. He further contended that the accident is of the year 2011 and therefore, for every percentage of injury, a sum of Rs.3,000/- ought to have been awarded towards permanent disability and he sought for enhancement of compensation under the head of permanent disability.

5. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company had contended that there is no further scope for enhancing the compensation, since the award under the other heads are on the higher side. Hence, he prayed for sustaining the award passed by the Tribunal.

6. I have carefully considered the submissions made by the learned

counsel on either side.

7. As rightly pointed out by the learned counsel appearing for the appellant, when the Auto driver did not possess valid driving license on the date of accident, it is a clear case of violation of policy condition, which attract an order of pay and recovery. The Tribunal was not right in exonerating the Insurance Company. Therefore, the order of the Tribunal exonerating the Insurance Company is hereby set aside and there shall be an order of pay and recovery.

8. The learned counsel appearing for the appellant had brought to the notice of this Court, a judgment of this Court in (***M/s.National Insurance Company Vs. Ramesh Kumar)*** reported in ***2013 (2) TNMAC 583.*** This Court has chosen to award a sum of Rs.3,000/- per percentage of permanent disability, for an accident that has taken place in the year 2009. In the present case, the accident has taken place in the year 2011. This Court is of the considered opinion that instead of Rs.2,000/- per percentage, this Court can proceed to fix the compensation of Rs.3,000/- per percentage of disability. Therefore, the quantum of compensation under the head of permanent disability shall be 45% x Rs.3,000/- = Rs.1,35,000/- instead of 45%x

Rs.2000/- = Rs.90,000/-. The compensation under the other heads stand confirmed. The compensation awarded by the Tribunal is enhanced from Rs.1,21,000/- (Rupees One Lakh and Twenty One Thousand only) to Rs.1,66,000/- (Rupees One Lakh and Sixty Six Thousand only). The award amount shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition.

9. In the result, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. The Insurance Company shall deposit the amount before the Tribunal within a period of eight weeks from the date of receipt of a copy of this order and thereafter they are at liberty to recover the same from the first respondent in the claim petition. In respect of the minor claimant/ appellant, the amount shall be deposited in a Nationalized Bank till he attains majority and the guardian of the minor claimant is permitted to withdraw the interest once in three months. There shall be no order as to costs.

24.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
   (Principal Sub Court),
   Tirunelveli.

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

R.VIJAYAKUMAR,J.

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