BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.06.2024

PRONOUNCED ON : 14.06.2024

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1206 of 2018

D.Govindan @Govindaraj .....Appellant/Petitioner

Vs.

1.SArjunan

2.ICICI Lombard General Insurance Company Limited
Chodadhai Centre, 2nd & 3rd Floor
No.140, Nungambakkam High Road
Chennai 600 034. ...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, to set aside the fair and decreetal order passed in MCOP.No.3330 of 2013 dated 10.04.2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Tiruchirappalli by allowing this appeal.

For Appellant : Mr.H.Arumugam

For R1 : No appearance

For R2 : Mr.V.Muthukamatchi

JUDGMENT

The present appeal has been filed by the claimant in MCOP.No.3330 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Tiruchirappalli challenging the exoneration of the Insurance Company and for enhancement of compensation.

2.According to the injured claimant, he had hired Minidor Auto owned and driven by the first respondent for the purpose of carrying Air-Compressor for drip irrigation work. Due to the rash and negligent driving of the driver of the said auto, it got capsized and the claimant had sustained injuries. He had prayed for a compensation of Rs.75/- lakhs.

3.The second respondent/Insurance Company had filed a counter contending that though the claimant was travelling in a cabin of the Minidor Auto, he was travelling in the capacity as gratuitous passenger and not the owner of the goods. In fact, the said Auto was engaged to attend a temple function and at the time of accident, about 20 persons have travelled in the said Auto. The Insurance Company had further challenged the negligence, liability and the quantum of compensation as prayed for in the claim petition.

4.The Tribunal after considering the oral and documentary evidence, had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent. The

Tribunal further found that the injured claimant had not established the fact that he had travelled in the Minidor Auto as owner of the goods or he was carrying the Air Compressor in the said Auto at the relevant point of time. In view of the said finding, the Tribunal had arrived at a finding that the claimant having travelled as a gratuitous passenger in a goods vehicle and the same is not covered by the Insurance Policy and proceeded to exonerate the Insurance Company. The Tribunal had fixed the compensation of Rs.10,15,349/- and mulcted the liability upon the owner of the vehicle. This award is under challenge by the claimant.

5.According to the learned counsel appearing for the claimant, the claimant has marked Exhibit P1-F.I.R which would clearly indicate that the claimant had travelled only in the cabin of the Minidor Auto along with the goods as owner of the said goods. The Tribunal had erred in not properly appreciating the oral and documentary evidence. When the claimant has travelled in the goods vehicle as owner of the goods or even assuming as a load man after unloading the goods, he is covered under the policy. Therefore, the Tribunal was not right in exonerating the insurance company. He had further contended that the notional income as fixed by the Tribunal at Rs.4500/- is on the lesser side considering the fact that the claimant's leg has been amputated below the knee. Hence, he prayed for enhancement of compensation and to mulct the liability upon the insurance company.

6.Per contra, the learned counsel for the Insurance Company had contended that in the F.I.R has been lodged by the injured claimant, there is no reference about carrying the Air Compressor in the load Auto. The claimant along with 20 other persons had travelled in the said vehicle only as gratuitous passengers after consuming alcohol. Therefore, the Tribunal was right in exonerating the Insurance Company and mulcting the liability upon the owner of the vehicle. He had further contended that there is no scope for enhancement of the award.

7.I have considered the submissions made on either side and perused the material records.

8.It is not in dispute that the claimant had travelled in the Minidor Auto on 21.08.2011 sitting in the cabin along with the driver. A perusal of Exhibit R1/Insurance Policy reveals that carrying capacity of the said goods vehicle is two. Therefore, there is no violation of statutory rules or policy condition in the travelling of the injured claimant in the cabin of the Minidor Auto.

9.In the claim petition, the claimant had contended that he had hired the said Auto for carrying Air Compressor for the purpose of trip irrigation business and he was seated in the cabin only as a owner of the goods. The accident has taken place at about 5.45 p.m on 21.08.2011. Due to serious injuries sustained by him, he was admitted to the hospital. The police authorities have registered the statement of the claimant at 10.15 p.m on

22.08.2011. In the said statement, the claimant had contended that after unloading the goods, he was travelling in the cabin of the Minidor Auto along with three other persons who were sitting on the load area of the Minidor Auto. In the said statement, there is no reference for hiring of the Auto for carrying Air Compressor or Air Compressor was loaded in the Auto during the time of accident. Therefore, it is clear that he was not travelling in the goods vehicle as owner of the goods.

10.The Insurance Company in their counter had contended that the claimant had travelled in the goods vehicle as a gratuitous passenger in a drunken mood after attending a temple function. A perusal of accident register which is part of Exhibit R2 investigation report reveals that there is no reference about the fact that the claimant was in a drunken mood. Though it is contended on the side of the Insurance Company that more than 20 persons have travelled after attending the temple function, it has not been established through oral or documentary evidence.

11.As could be seen from the F.I.R, the claimant had travelled in the cabin of the goods vehicle after unloading the goods. This fact is also supported by the statement given by the driver of the vehicle to the investigator which is part of Exhibit R2 investigation report. Therefore, it is clear that the claimant though had not travelled as the owner of the goods, had travelled in the cabin as a load man after unloading the goods. A perusal of Exhibit R1 policy indicates that the premium has been paid under IMT 40 which covers coolie/loadman. Therefore, this Court is of the considered opinion that the policy covers the injured claimant also who had travelled in the said vehicle as a load man. In such circumstances, the Tribunal was not right in exonerating the insurance company.

12.The claimant had contended that he was earning a sum of Rs.15,000/- per month at the time of the accident by letting out the tractor and air-compressor to agriculturists. However, no proper evidence has been let in on the side of the claimant. The Tribunal had fixed the notional income at Rs.4500/- per month. The Hon'ble Supreme Court had fixed the notional income of a vegetable vendor at Rs.6500/- for an accident that took place in the year 2008, in the judgment reported in ***2014 (2) SCC 735 (Syed Sadiq Etc vs Divisional Manager, United India Insurance Co.,Ltd.,).*** Therefore, it would appropriate to fix the notional income at Rs.7000/- per month. Being self-employed, future prospects could be added at 25%. Therefore, the total monthly income is calculated as follows:

Notional monthly Income	Rs.7,000.00
Add: 25% future prospects (Rs.7000/-x25/100)	Rs.1750.00

Monthly income	Rs.8750.00

13.Considering the fact that the leg of the claimant has been amputated up to knee level, this Court finds that the percentage of disability can be fixed at 75% as per Exhibit P5-disability certificate and proceeds to apply the multiplier method.

14.Based upon the above said facts, the quantum of compensation is re-assessed as follows:

Loss of earning capacity (Rs.8750/-x15x12x75/100)	Rs. 11,81,250/-
Transportation	Rs. 10,000/-
Extra nourishment	Rs. 10,000/-
Loss of expectation of life	Rs. 1,00,000/-
Loss of amenities	Rs. 1,00,000/-
Pain and suffering	Rs. 50,000/-
Medical expenses	Rs. 60,849/-
Attender charges	Rs. 50,000/-
Loss of income during treatment (Rs.7000/- x6)	Rs. 42,000/-
Total	**Rs. 16,04,099/-**

15.The compensation amount is enhanced from Rs.10,15,349/- Rs.16,04,099/- which would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. The second respondent/insurance company is directed to deposit the said amount along with accrued interest and costs, less the amount already deposited, if any, within a period of 8 weeks from the date of receipt of a copy of this judgment. On such deposit the appellant/claimant is permitted to withdraw the said amount along with accrued interest and costs.

16.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

14.06.2024

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

1.The Motor Accident Claims Tribunal
(Special Sub Judge),
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.1206 of 2018

14.06.2024