(2014) 07 MAD CK 0024

In the Madras High Court

Case No : C.M.A.No.2791 of 2011

M.Humayum APPELLANT

Vs

M. Anandhan RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) 2 TNMAC 446

Hon'ble Judges : Mr. R.Subbiah, J.

Bench : Single Bench

Advocate : Mr.C.Prabhakaran, Advocate, for the Applicant; Mr.S.Arunkumar, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

Mr. R.Subbiah, J.—Aggrieved over the findings rendered by the Motor Accident Tribunal (Chief Judicial Magistrate), Vellore, in and by award dated 20.10.2009 made in M.A.C.T.O.P.No.669 of 2008, in exonerating the Insurance Company from paying the compensation amount, the present appeal has been filed by the claimant.

2. When the matter is taken up for hearing, the learned counsel for the claimant/ appellant submitted that the Tribunal has exonerated the Insurance Company from paying the compensation to claimant on a finding that the rider of the two-wheeler bearing Registration No.TN-23-L-4323, who has caused the accident, was having licence only for driving the light motor vehicle and he did not have licence to ride the two-wheeler, as such there is violation of the conditions of the insurance policy and hence, the Insurance Company, who is the insurer of the said two-wheeler, is not liable to pay the compensation amount. Hence, aggrieved over the said finding, the present appeal has been filed by the claimant.

3. In this regard, the learned counsel for the appellant/claimant, by relying upon the decision of the Hon''ble Supreme Court in S.Iyyapan v. United India

Insurance Company Limited and anr reported in (2013) 7 Supreme Court Cases 62, submitted that non-possession of driving licence cannot be a ground to exonerate the Insurance Company from paying the compensation amount to third party. Therefore, based on the dictum laid down by the Hon''ble Supreme Court in the above cited case, the Tribunal ought to have directed the Insurance Company to pay the compensation amount.

4. With regard to the quantum of compensation, it is the submission of the learned counsel for the appellant/claimant that when considering the nature of disability suffered by the victim, the total compensation amount of Rs.64,900/- awarded by the Tribunal cannot be said to be an adequate compensation. Thus, he prayed for proper enhancement of the compensation amount.

5. The learned counsel for the Insurance Company submitted that in respect of directing the Insurance Company to pay the compensation, liberty has to be given to the Insurance Company to recover the same from the owner of the vehicle. So far as the quantum of compensation is concerned, it is the submission of the learned counsel for the Insurance Company that the amount awarded by the Tribunal cannot be said to be inadequate and there is no need for enhancement.

6. Heard both sides and perused the materials available on record.

7. As regards the liability on the part of the Insurance Company to pay the compensation, I am of the opinion that as per the recent decision of the Hon''ble Supreme Court in the case of S.Iyyapan v. United India Insurance Company Limited and anr, cited supra, the Insurance Company is liable to pay the compensation to the claimant, since the Insurance Company can not disown its liability to pay the compensation to the third parties on the ground of non-possession of valid driving licence, however, the Insurance Company is at liberty to recover the same from the owner of the vehicle. Therefore, I am of the opinion that it would be proper to direct the Insurance Company to pay the compensation and then, to recover the same from the owner of the vehicle.

8. So far as the quantum of compensation is concerned, a sum of Rs.40,000/- has been awarded by the Tribunal under the head of loss of earning power. From the materials available on record, I find that on account of the accident, the claimant sustained fracture on the right leg and the disability suffered by the claimant was assessed at 35% by the Doctor, who has been examined as P.W.2 before the Tribunal. Therefore, in my considered only, considering the disability suffered by the claimant, a sum of Rs.40,000/- awarded by the Tribunal under the head of loss of earning power, is on the lower side. Hence, by fixing the disability at 30% and by taking a sum of Rs.2,000/- for each percentage of disability, a sum of Rs.60,000/- (2000 X 30) is hereby awarded.

9. That apart, a sum of Rs.10,000/- awarded by the Tribunal under the head of pain and suffering needs to be enhanced and accordingly, the same is enhanced to Rs.15,000/- by adding another sum of Rs.5,000/-. Considering the fact that

the claimant would find it difficult to do his work as he was doing before the accident, a sum of Rs.15,000/- is hereby awarded for loss of amenities. A sum of Rs.1,000/- awarded by the Tribunal under the head of extra-nourishment is hereby enhanced to Rs.2,000/-. The compensation awarded by the Tribunal under other heads are confirmed.

10. Consequently, the compensation amount of Rs.64,900/- awarded by the Tribunal is hereby modified and enhanced to a sum of Rs.1,00,000/-. Break up details of the modified compensation amount are as follows:-

Loss of earning power

Rs.60,000/-

Transportation

Rs. 1,000/-

Extra-nurishment

Rs. 2,000/-

Medical Expenses

Rs. 6,900/-

Pain and Suffering

Rs.15,000/-

Loss of amenities

Rs.15,000/-

Total

Rs.99,900/-

(rounded off to Rs.1 lakh)

11. In view of the above modification, the Insurance Company is directed to deposit the modified compensation amount of Rs.1 lakh, with interest the rate of 7.5% per annum, from the date of petition till the date of deposit, to the credit of the above said MACTOP, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same, by filing necessary application before the Tribunal.

12. With the above terms, the Civil Miscellaneous Appeal is ordered. No costs.

