

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.09.2017
CORAM
THE HON'BLE MR. JUSTICE R.SUBBIAH
and
THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA
C.M.A.Nos.2460 and 3061 of 2013
and
CMP.No.1 of 2013

CMA.No.2460 of 2013

K.Sugumar ..Appellant /Petitioner
..vs..

1.N.Karthikeyan
2.United India Insurance Co. Ltd.
3.D.Sunilkumar
4.M/s. Oriental Insurance Company Limited
Purasaiwakkam, Chennai - 600 007. ..Respondents
(R3 & R4 impleaded as per the order
dated 29.03.2016 in CMP.No.3442 of 2016)

CMA.No.3061 of 2013

United India Insurance Co. Ltd.
Chennai -600 001. ..Appellant/2nd Respondent
..vs..

1.K.Sukumar ..R1 /Petitioner
2.N.Karthikeyan ..R2 Respondents/
1st Respodnent

Civil Miscellaneous Appeals have been filed under Section 173 of the Motor Vehicles Act against the order and decree dated 16.11.2012 passed by the Motor Accidents Claims Tribunal, XVIII Additional Court, Chennai in MCOP.No.3905 of 2010.

CMA.No.2460 of 2013
For Appellant : Mr.A.S.Kailasam
for M/s.Vijaya and Anandh
For R2 : Mr.S.Arunkumar
For R4 : Mr.N.Vijayaraghavan
CMA.No.3061 of 2013
For Appellant : Mr.S.Arunkumar
For R1 : Mr.A.S.Kailasam
for M/s.Vijaya and Anandh

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

These two appeals have been filed by the claimant as well as the United India Insurance Company Limited against the order and decree dated 16.11.2012 passed by the Motor Accidents Claims Tribunal, XVIII Additional Court, Chennai in MCOP.No.3905 of 2010.

2.Since both the appeals are arising out of one and the same order passed by the Tribunal in MCOP.No.3905 of 2010, the same are disposed of by this common judgment.

3.Being not satisfied with the quantum of compensation, the claimant filed C.M.A.No.2460 of 2013 seeking enhancement of compensation, whereas CMA.No.3061 of 2013 is filed by the United India Insurance Co. Ltd, challenging the liability fastened on them to compensate the claimant as well as the quantum of compensation awarded by the Tribunal.

4.It will be convenient for us, if we refer to the parties as per their rank in MCOP.No.3905 of 2010 viz., the appellant in CMA.No.2460 of 2013 as the petitioner and the appellant in CMA.No.3061 of 2013 as the second respondent insurance company.

5.The facts leading to the filing of the claim petition are that on 23.09.2010 at about 6.30am, near Vellappanchavadi, opposite to Kendravihar, a Mini lorry bearing Regn.No.TN31-M-4171 was driven by the petitioner. While so, it hit the rear side of a container lorry bearing Regn.No.TN28-P-2517, which was parked on the T.H. Road near center median, without giving any indicator or signal to the vehicles, which were plying on the road to have a glimpse over the parked vehicle and caused the accident. As a result of the same, the petitioner sustained grievous injuries all over the body and fracture on his both legs. He filed a petition claiming a sum of Rs.25,00,000/- as compensation.

6.The claim petition was resisted by the second respondent insurance company stating that the petitioner is a tortfeasor, since he only hit the parked vehicle from behind and hence, the second respondent insurance company is not liable to pay any compensation to the petitioner.

7.In order to prove the claim made before the Tribunal, the petitioner examined himself as P.W.1, besides examining two witnesses as P.W.2 and P.W.3 and marked Exs.P1 to P12 documents. On the side of the second respondent insurance company, the driver of the container lorry was examined as R.W.1 and the Investigating Officer was examined as R.W.2 and two documents

were marked as Exs.R1 and R2.

8.The Tribunal, after analysing the entire oral and documentary evidence, has come to a conclusion that the accident was caused on account of the negligence mainly on the driver of the container lorry and accordingly, fastened the liability on the second respondent insurance company at 80% and on the petitioner at 20%. Holding so, the Tribunal has quantified the compensation at Rs.9,62,047/- and directed the second respondent insurance company to pay a sum of Rs.7,69,637/- (80% of Rs.9,62,047) to the petitioner, with interest at 7.5%p.a. from the date of petition till the date of realisation. Aggrieved over the same, the petitioner and the second respondent insurance company have filed the respective appeals before this Court.

9.Learned counsel for the second respondent insurance company (appellant in CMA.No.3061 of 2013) submitted that though the accident had occurred due to the sole negligence on the part of the petitioner, who drove the Mini lorry and hit the parked container lorry, without noticing the same, the Tribunal erred in fastening the maximum liability i.e., 80% on the insurer of the container lorry. According to the learned counsel, the accident had occurred on 23.09.2010 at about 6.30 am in the month of September, during the day time, when sun light would have been there. As such, there is every possibility for the petitioner to see the vehicle parked near the center median of the road. Thus, learned counsel submitted that the order of the Tribunal in this regard, has to be set aside.

10.Learned counsel for the petitioner (appellant in CMA.No.2460 of 2013) submitted that there is no evidence to show that proper indicator or signal was made available by the driver of the parked container lorry to the vehicles, which were plying on the road to have a glimpse over the parked vehicle. In the absence of any such evidence, the finding of the Tribunal with regard to fastening the liability at 80% on the part of the second respondent insurance company, cannot be found fault with. Thus, he sought for dismissal of the appeal filed by the second respondent insurance company. Regarding the quantum of compensation awarded by the Tribunal, the learned counsel submitted that considering the nature of the injuries sustained by the petitioner in the accident, the compensation awarded by the Tribunal is extremely on the lower side and the same has to be enhanced.

11.We have given due consideration to the submissions made by the learned counsel on either side and perused the records and the order impugned herein.

12. So far as the question of contributory negligence is concerned, it could be seen from the records that on 23.09.2010 at about 6.30am, the container lorry bearing Regn.No.TN28-P-2517 was parked at the centre median due to technical fault. Placing reliance on the evidence of P.W.1/injured, learned counsel for the petitioner submitted that since the vehicle was parked without any indicator or signal to the vehicles, which were plying on the road, the petitioner was not in a position to see, as to whether the vehicle was parked or moving, as a result of which, he hit the parked vehicle. Therefore, the accident was caused on account of the sole negligence of the driver of the container lorry insured with the second respondent insurance company, whereas, the learned counsel for the second respondent insurance company submitted that the accident took place at about 6.30am and at that time, proper sun light was there. Without properly noticing the same, the petitioner drove his vehicle in a rash and negligent manner at a hectic speed and hit the parked vehicle and hence, the petitioner was himself responsible for the accident.

13. We are of the opinion that the accident had occurred at 6.30am during the month of September 2010 and there was proper sunlight. Had the petitioner been more vigilant, he could have avoided the accident. At the same time, there was no material available to show that the vehicle was parked on the road with an indicator or signal. In such view of the matter, this Court comes to an inevitable conclusion that the accident had occurred due to the negligence of the drivers of both the vehicles. Accordingly, the liability fixed on the second respondent insurance company and the petitioner at 80% and 20% respectively is hereby modified as 50% each.

14. As regards the quantum of compensation, the petitioner claimed that he was aged about 26 years and was earning a sum of Rs.10,000/- per month by working as driver at the time of accident. But, the Tribunal has taken only a sum of Rs.4,500/- as the monthly income of the petitioner, since there was no documentary evidence to prove the income earned by him. However, we are of the view that considering the cost of living prevailing at that time, it would be just and appropriate to fix a sum of Rs.6,500/- as the monthly income of the petitioner. In addition, the petitioner is entitled to 50% of the salary towards future prospects. Further, considering the age of the petitioner, the Tribunal has adopted the multiplier '18', which, in our opinion, is just and proper and the same is hereby confirmed.

15. Regarding the percentage of permanent disability, the petitioner as P.W.1, in his evidence, deposed that due to the accident, his right leg was amputated and his left leg sustained

fracture, which was corroborated by P.W.3/Doctor and Exs.P2, P3 and P4 medical records and P7- photos. Ex.P6 disability certificate would show that the petitioner sustained permanent disability at 80%. Considering the same, the Tribunal has fixed the permanent disability of the petitioner at 80%, which, in our opinion, is based on the oral and documentary evidence and is hereby confirmed. Accordingly, the compensation under the head "loss of income" is recalculated as follows:

$$(Rs.6,500/- + 50\%) \times 12 \times 18 \times 80\% = Rs.16,84,800/-$$

16. With respect to the compensation awarded under other conventional heads, taking note of the nature of injuries sustained by the petitioner in the accident, Rs.1,00,000/- towards pain and suffering and Rs.5,000/- towards nutrition awarded by the Tribunal appear to be reasonable and the same are hereby confirmed. Similarly, Rs.24,447/- awarded by the Tribunal towards medical bills is hereby confirmed, as the same is based on Ex.P8 medical bills. That apart, a sum of Rs.50,000/- awarded by the Tribunal towards maintaining artificial leg is hereby confirmed. However, Rs.5,000/- awarded by the Tribunal towards transportation is on the lower side and the same is hereby enhanced to Rs.10,000/-.

17. In view of the above, the compensation awarded by the Tribunal is hereby modified as follows:

Loss of income	-	Rs.16,84,800/-
Pain and suffering	-	Rs. 1,00,000/-
Nutrition	-	Rs. 5,000/-
Transportation	-	Rs. 10,000/-
Medical Expenses	-	Rs. 24,447/-
Maintaining artificial leg	-	Rs. 50,000/-
		
Total	-	Rs.18,74,247/-
		

$$50\% \text{ of Rs.18,74,247/-} = Rs.9,37,123.50/-$$

$$@ Rs.9,37,124/-$$

Consequently, the second respondent insurance company (appellant in CMA.No.3061/2013) is directed to deposit a sum of Rs.9,37,124/-, after deducting the amount already deposited, if any, along with interest at 7.5%pa. from the date of interest till the date of deposit, to the credit of MCOP.No.3905 of 2010 on the file of the Motor Accidents Claims Tribunal, XVIII Additional Court, Chennai, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the petitioner (appellant in CMA.No.2460/2013) is permitted to withdraw the compensation amount with proportionate interest lying in the deposit.

18. Accordingly, both the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

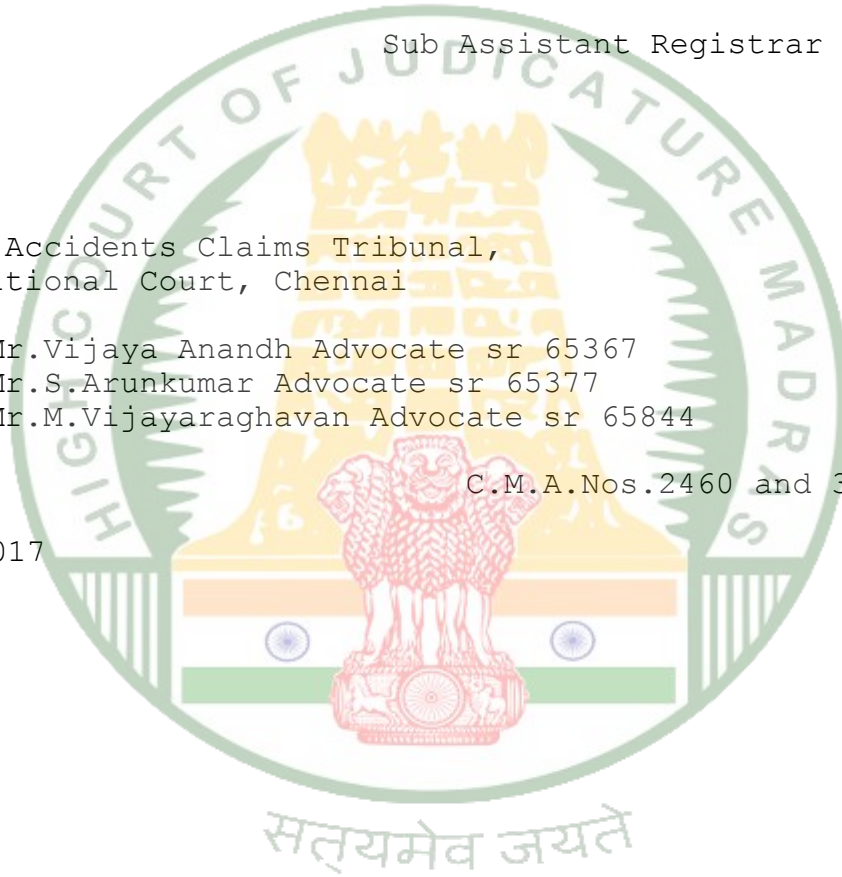
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To
The Motor Accidents Claims Tribunal,
XVIII Additional Court, Chennai

+1 cc to Mr.Vijaya Anandh Advocate sr 65367
+1 cc to Mr.S.Arunkumar Advocate sr 65377
+1 cc to Mr.M.Vijayaraghavan Advocate sr 65844

C.M.A.Nos.2460 and 3061 of 2013

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