

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2332 and 2696 of 2015

C.M.A.No.2332 of 2015

Ms/.Reliance General Insurance Co. Ltd.,
Rai's Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
Anna Nagar, Chennai 600 040.

.. Appellant in C.M.A.No.2332/2015/2nd Respondent

Vs.

1.Mohamed Saleem

2.Sivabakkiyam

.. Respondents in C.M.A.No.2332/2015/
Petitioner/1st Respondent

(R2 set exparte before the Tribunal)

C.M.A.No.2696 of 2015

Mohammed Saleem

.. Appellant in C.M.A.No.2696/2015/Petitioner

Vs.

1.N.Sivabhakiyam

2.Ms/.Reliance General Insurance Co. Ltd.,
Rai's Tower, Plot No.2054,
2nd Avenue, 2nd Floor,
Anna Nagar,
Chennai 600 040.

.. Respondents in C.M.A.No.2696/2015
Respondents

(R1 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988 against the award and
decree dated 21.01.2015 made in M.C.O.P.No.1305 of 2013 on the

file of Additional District Court, (Motor Accidents Claims Tribunal), Namakkal.

(In C.M.A.No.2332 of 2015)

For Appellant : Mr.S.Arunkumar

For R1 : Mr.Ma.P.Thangavel

For R2 : No Appearance

(In C.M.A.No.2696 of 2015)

For Appellant : Mr.Ma.P.Thangavel

For R2 : Mr.S.Arunkumar

R1 : Exparte

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed against the award dated 21.01.2015 made in M.C.O.P.No.1305 of 2013 on the file of Additional District Court, (Motor Accidents Claims Tribunal), Namakkal.

2.Both the appeals are arising out of the same accident and filed against the common award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petitions.

3.The appellant in C.M.A.No.2696 of 2015 is the claimant who filed M.C.O.P.No.1305 of 2013, claiming a sum of Rs.12,50,000/- as compensation for the injuries suffered by him in the accident that took place on 18.08.2013.

4.According to the claimant, he parked the car on the left side of the road and was changing the tyre. At that time, a van belonging to the 1st respondent, driven by its driver in a rash and negligent manner, dashed against the car parked by the claimant and in the said impact, the claimant suffered grievous injuries. He took treatment as in-patient from 18.08.2013 to 30.08.2013, 13.02.2014 to 22.02.2014 and 27.06.2014 to 30.06.2014 at Ganga Hospital, Coimbatore in three different periods. At the time of accident, claimant was working as a driver and earning a sum of Rs.7,000/- per month. Due to the injuries sustained by him in the accident, he could not do the work as he was doing earlier and he lost his earning capacity. The accident occurred only due to the rash and negligent driving by the driver of the van belonging to the 1st respondent and insured with the 2nd respondent and hence, both of them are

liable to pay the compensation.

5.The 1st respondent, owner of the vehicle remained exparte.

6.The 2nd respondent filed counter statement and denied all the averments and stated that the claimant parked the vehicle in the middle of the road, without any indicator and only due to the negligence on the part of the claimant, accident had occurred. The driver of the van was not having any valid license and hence, 2nd respondent is not liable to pay the compensation. The claim petition is not maintainable for not impleading necessary parties.

7.Before the Tribunal, the claimant examined himself as P.W.1 and one Doctor as P.W.2 and marked 16 documents as Ex.P1 to P16. The 2nd respondent did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence let in by the claimants and the fact that no evidence was let in by the 2nd respondent disproving the claim of the claimant, held that the accident occurred only due to the rash and negligent driving by the driver of the van belonging to the 1st respondent and the 2nd respondent, as the insurer is liable to pay a sum of Rs.12,26,400/- as compensation to the claimant.

9.Challenging the liability as well as the quantum of compensation awarded by the Tribunal, the 2nd respondent-Insurance Company has come out with C.M.A.No.2332 of 2015.

10.Not being satisfied with the compensation granted by the Tribunal, the claimant has come out with C.M.A.No.2696 of 2015, seeking enhancement of the same.

11.The learned counsel for the claimant contended that the claimant examined himself as P.W.1 and proved that the accident occurred due to the negligence on the part of the driver of the van and there is no rebuttable evidence to disprove the evidence of the claimant. The claimant was working as a driver and the Tribunal ought to have fixed the income at Rs.9,000/- per month. The amounts awarded by the Tribunal under different heads are meager. The Tribunal has not awarded any amounts towards future medical expenses and prayed for enhancement of compensation.

12.Per contra, the learned counsel for the 2nd respondent contended that it is due to the negligence on the part of the claimant by parking the car in the middle of the road without parking light or indicator, the accident had occurred. In any event, the Tribunal ought to have fixed contributory negligence

on the part of the claimant. In the absence of any evidence with regard to income and nature of avocation, the Tribunal erred in awarding compensation for loss of income and the amounts awarded under other heads are excessive.

13. Heard the learned counsel for the claimant as well as the 2nd respondent and perused the materials on record.

14. From the materials on record, it is seen that the claimant examined himself as P.W.1 and deposed the manner in which the accident had occurred. The 1st respondent, owner of the van remained exparte. The 2nd respondent has not examined the driver of the van or any other witness to prove that the car was parked by the claimant in the middle of the road without any indicator or parking light. The contention of the claimant that he parked the car on the left side and was changing tyre was not rebutted by the 2nd respondent, by letting in any evidence. In such circumstances, there is no reason to interfere with the findings of the Tribunal that the accident has occurred only due to the rash and negligent driving by the driver of the van.

15. As far as the quantum of compensation is concerned, the learned counsel for the claimant contended that the Tribunal has fixed a meager sum of Rs.6,000/- as monthly income of the claimant. The Tribunal ought to have fixed a sum of Rs.9,000/- per month as notional income of the claimant. In the claim petition, the claimant has stated that he was earning a sum of Rs.7,000/- per month at the time of accident. He has not let in any evidence to prove the said claim. In the absence of any evidence with regard to income, the Tribunal has fixed the notional income at Rs.6,000/-, which is reasonable. The learned counsel for the claimant, contrary to the pleadings in the claim petition, is contending that the Tribunal ought to have fixed a sum of Rs.9,000/- as income of the claimant. The Tribunal, considering the deposition of the Doctor, P.W.2 and Exs.P15 and P16, the X-ray and disability certificate respectively, has fixed the percentage of disability at 65%. The Tribunal considering the nature of injuries and percentage of disability, has awarded compensation under various heads. The Tribunal has applied the multiplier method for awarding compensation. The claimant was 21 years at the time of accident. The Tribunal erred in applying the multiplier of '17', instead of '18'. Thus, the amounts granted for loss of earning power is modified as Rs.8,42,400/- [Rs.6,000 x 12 x 18 x 65%].

16. The amounts awarded by the Tribunal towards transportation and loss of amenities are excessive. Hence, the same are reduced to Rs.10,000/- from Rs.25,000/- and Rs.25,000/- from Rs.50,000/- respectively. The Tribunal has not awarded any amounts towards future medical expenses. Hence, a sum of Rs.25,000/- is granted towards the same. The amounts granted by

the Tribunal in all other heads are just and reasonable and they are hereby confirmed. Thus, the compensation granted by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Future loss of income	7,95,600/-	8,42,400/-	enhanced
2.	Medical expenses	2,70,812/-	2,70,812/-	confirmed
3.	Transportation	25,000/-	10,000/-	reduced
4.	Pain and suffering	50,000/-	50,000/-	confirmed
5.	Extra nourishment	20,000/-	20,000/-	confirmed
6.	Attender charge	15,000/-	15,000/-	confirmed
7.	Loss of amenities	50,000/-	25,000/-	reduced
8.	Future medical expenses	-	25,000/-	granted
	Total	12,26,412/-	12,58,212/-	Enhanced by Rs.31,800/-

17. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal is enhanced to Rs.12,58,212/- with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the enhanced award amount, with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Additional District Judge,
(Motor Accidents Claims Tribunal), Namakkal

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Ma.Pa.Thangavel, Advocate, S.R.No. 82597

+1cc to Mr.S.Arunkumar, Advocate, S.R.No. 82740

C.M.A.Nos.2332 and 2696 of 2015

RSV(CO)
GN(02/05/2019)



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