IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.2647 of 2017 & 321 of 2018
and
CMP.Nos.3267 and 5706 of 2018

CMA.No.2647 of 2017

G.Anandan .. Appellant/Petitioner

Vs.

1.G.Hariharan
2.T.Harikrishnan
(R1 & R2 were set exparte in the Trial Court)

3.The Reliance General Insurance Co. Ltd.,
Regional Office, (Legal Department),
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam, Chennai - 600 034. ..Respondents/Respondents

CMA.No.321 of 2018

M/s.Reliance General Insurance Company Ltd.,
Reliance House, Haddows Road,
Nungambakkam, Chennai - 600 034. .. Appellant/3rd Respondent

Vs.

1.G.Anandan ..1st Respondent/Petitioner in M.C.O.P
2.G.Hariharan
3.T.Harikrishnan .. Respondents 2 & 3/Respondents 1 & 2

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.04.2017 made in MACTOP.No.8217 of 2013 on the file of the III Judge, Motor Accidents Claims Tribunal, (III Court of Small Causes), Chennai.

Prayer in C.M.A.No.2647 of 2017:
To enhance the compensation from Rs. 8,01,100/- to Rs.22,00,000/- with higher rate of interest and costs.

Prayer in C.M.A.No.321/2018:

To set aside the award dated 13.04.2017 madein M.C.O.P. 8217/2013 on the file of the Motor Accident Claims Tribunal, 3rd Court of Small Causes, Chennai.

(In both the CMAs)

For Appellant : M/s.P.T.Saleem Fathima
Appellant in CMA.No.2647 of 2017 &
1st Respondent in CMA.No.321/2018

For Respondents: Mr.S.Arumkumar
R3 in CMA.No.2647/2017 &
Appellant in CMA.No.321 of 2018

R1 & R2 - Exparte
in CMA.No.2647 of 2017

R2 & R3 - Notice not served
in CMA.No.321 of 2018

COMMON JUDGMENT

Both the C.M.A.Nos.2647 of 2017 and 321 of 2018 arise out of the finding of the learned Motor Accident Claims Tribunal, III Small Causes Judge, Chennai dated 13.04.2017 made in MCOP.No.8217 of 2013.

2.I heard the arguments on either side and perused all the materials available on record and Judgments produced by either parties.

3.The claimant is G.Anandan. It is alleged that while he was riding his motor cycle bearing Regn.No.TN-09-AW-5563 on Bangalore Highways at Nazarathpet the Mahindra Cab bearing Regn.No.TN-22-CA-9308 belonging to the 2nd respondent and insured with the appellant in C.M.A.No.321 of 2018 was driven by the 1st respondent in a rash and negligent manner and dashed against the claimant. In the said accident the claimant suffered fracture of his right leg below knee and right hand. He was immediately hospitalized and spent 23 days in the hospital as inpatient. He underwent to surgery to fix the fracture. Before the tribunal the claimant examined himself as PW1 and Doctor was examined as PW2 and an independent eye witness was examined as PW3 and marked document P1 to P4. On the side of the respondent Deputy Manager of the insurer was examined as RW1 and Doc.Ex.R1 to R3 were marked. The Tribunal on consideration of all the facts above came to the considered view that the claimant is entitled to a total compensation of Rs.8,01,100/- and directed the

Insurer to pay the same. Aggrieved by the said award of the tribunal the claimant has preferred the C.M.A.No.2647 of 2017 while the Insurer has preferred C.M.A.No.321 of 2018.

4.On the question of negligence it is found that the Insurer has marked 3 documents namely FIR, Arrest memo and charge sheet against the claimant. It is seen that the FIR has been registered against the claimant who was injured in the accident and taken to the hospital on the date of accident and remained in the hospital for 23 days. Apparently the FIR was given by the driver of the maxi cab who has given the same to escape from his liability. The claimant had no opportunity to give a complaint. A case under Section 279 of IPC, which is rash and negligent driving was registered against the claimant. But this is alone at the instance of the driver of the cab. Further FIR is only a statement regarding the occurrence namely the accident. The person who gave the FIR has not been examined to prove the contents. While the claimant has examined an independent eye witness PW3 Jayaraman. According to him the accident occurred due to the rash and negligent driving of the maxi cab. He has stated that he was standing at Nazarathpet Avadi High Road to drink tender coconut and saw the accident, he also helped the claimant to board the Ambulance. In 2006 (2) TNMAC 37 this Court had observed that "statement before the Tribunals are made in solemn affirmation. FIR is lodged in haste and it cannot be a substitute for the evidence giving exhaustive version of the occurrence. FIR cannot be raised on a pedestal higher than that of the statement on oath. Statement made before the Tribunal have more value than FIR". Therefore on the question of negligence the evidence of the PW1 and PW3 are more valuable than the FIR. Therefore on the question of negligence the point is answered in favour of the claimant. However the Insurer had taken the stand of that the claimant had no valid driving licence but no effort has been taken by the Insurer to prove the same. Even the FIR does not state so. Now on the question of negligence the Driver of the insured alone can raise the issue. While the insured can seek permission to raise the issue of by filing petition under Sec.170 of M.V. Act, it seems the Insurer herein had not filed any petition under Section 170 of M.V. Act and thus the Insurer cannot raise the issue of negligence while their liability to pay compensation remains under the Insurance Policy which was subsisting.

5.At the time of argument it was raised by the Insurer that the claimant had no valid driving licence and that criminal case was also against him. The Insurer vehemently argued the claimant should be held for contributory negligence. Therefore it is decided to fix the negligence on the part of the claimant. It is decided that it would meet the ends of justice if the negligence is fixed at 60:40 ratio. 60% is fixed on the driver of the van and 40% on the claimant.

6.Now to quantum, the claimant is a mason, he was 29 years old at the time of accident. The accident took place on 15.09.2013 and he remained in the hospital till 07.10.2013. Ex.P1 in the Discharge summary it says that he took treatment for fracture of both bones in the right leg and fracture of shaft of Radial right side. He was treated as an inpatient for 23 days. He has underwent surgery. The doctor PW2 has assessed his disability and found that the claimant has suffered 50% partial permanent disability and marked P3 disability certificate. Wherein it is found that "Malunion right tibia with widening with I.L. Nail, P.T.Stifness right knee ROM 0-10 (loss 50 deg) Difficulty in squatting. Right radius ORIF with widening P.T.Stiffness of F.A. with sepulture 0.40 (loss of 50)". The respondent being a mason cannot perform his work with 50% disability. A mason would have to stand for long hour and carry heavy loads. Since the disability is total there is going to be loss of earning capacity. The claimant had pleaded that he earned Rs.15,000 to Rs.17,300/- per month but no documents have been filed. The Tribunal fixed a monthly salary of Rs.8000/- per month which is reasonable. The tribunal also fixed a total disablement of 30% which is reasonable given the nature of injury. The claimant being 29 years old the tribunal adopted 17 multiplier and arrived at a future loss of earning at Rs.4,89,600/- which appears to be reasonable. The tribunal further fixed a sum of Rs.1,50,000/- for the 50% disability. After considering all the facts the tribunal awarded as follows under various heads:

Loss of Income	:	Rs.	5,420
Attender charges	:	Rs.	5,750
Transport charges	:	Rs.	10,000
Extra nourishment	:	Rs.	20,000
Damage to cloth	:	Rs.	1,000
Medical Bills	:	Rs.	500
Pain and suffering	:	Rs.	50,000
Damages for mental shock	:	Rs.	20,000
Disability 50% @ 3000	:	Rs.	1,50,000
Loss of earning	:	Rs.	4,80,600
Total		Rs.	8,01,051

This quantum is found very reasonable. The appellant in C.M.A.No.321 of 2018 has not raised any ground against the quantum of compensation and the same is confirmed.

7.Now since the liability is fixed at 60% on the Insurance and 40% on the claimant the Insurer shall be liable to pay only 60% of the amount which is Rs.4,80,630.60 which is less the 40% that is fix on the claimant. The Insurer shall be liable to pay the same to the claimant. Accordingly the award dated 13.04.2017 and made in MCOP.No.8217 of 2013 stands modified and the

C.M.A.No.321 of 2018 is partly allowed and CMA.No.2647 of 2017 is dismissed. The parties are directed to bear their own cost. The appellant is CMA.No.321 of 2018 is directed to deposit the sum of Rs.4,80,630.60 with interest at the rate of 7.5% p.a. from the date of petition till date of payment. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To
1.The III Judge, Motor Accidents Claims Tribunal,
(III Court of Small Causes), Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1 CC to Mr.S.Arunkumar, Advocate sr 60040.
+1 CC to Saleem Fathima, Advocate sr 59889.

C.M.A.Nos.2647 of 2017 & 321 of 2018
and
CMP.Nos.3267 and 5706 of 2018

RSV(CO)
SP(04/03/2019)