

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.Nos.2135 of 2017 and 2594 of 2018
and C.M.P.No.19639 of 2018

C.M.A.No.2135 of 2017

G.Duraiselvam ... Appellant/Claimant

Vs.

1.N.Murugesan
(1st respondent was set exparte in Trial Court)

2.Reliance General Insurance Co. Ltd.,
Plot No.2054, 2nd Floor, 2nd Avenue,
Anna Nagar,
Chennai 600 040. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.01.2017 made in M.C.O.P.No.3035 of 2013 on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.R.Arundathan
for Mr.C.Munusamy

For R1 : Exparte

For R2 : Mr.S.Arun Kumar

C.M.A.No.2594 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Plot No.2054, 2nd Floor, 2nd Avenue,
Anna Nagar,
Chennai 600 004. .. Appellant/2nd Respondent

Vs.

1.G.Duraiselvam

... 1st Respondent/Claimant

2.N.Murugesan

... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 18.01.2017 made in M.C.O.P.No.3035 of 2013 on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.R.Arundathan
for Mr.C.Munusamy

For R2 : Exparte

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

These Civil Miscellaneous Appeals have been filed against the common award dated 18.01.2017 made in M.C.O.P.No.3035 of 2013 on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

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

3.Mr.R.Arundathan, learned counsel takes notice for the claimant and submitted that he has also filed C.M.A.No.2135 of 2017 and by consent, C.M.A.No.2594 of 2018 is taken up for final disposal at the admission stage itself along with C.M.A.No.2135 of 2017.

4.The claimant filed the claim petition in M.C.O.P.No.3035 of 2013 on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.04.2013.

5.The Tribunal considering the pleadings, oral and documentary evidence, holding that the accident occurred due to the rash and negligent driving by the driver of the motor cycle, awarded a sum of Rs.9,47,000/- as compensation and directed the 2nd respondent-Insurance Company to pay the same.

6.Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come out with the appeal in C.M.A.No.2135 of 2017.

7.Challenging the award granted by the Tribunal, the 2nd

respondent-Insurance Company has filed the appeal in C.M.A.No.2594 of 2018.

8.The learned counsel appearing for the 2nd respondent-Insurance Company contended that the accident did not occur due to the rash and negligent driving by the rider of the motor cycle. The rider of the motor cycle applied brake in order to avoid hitting tricycle. The claimant fell from the two-wheeler as he was not holding the handles properly. The Tribunal erred in holding that the rider of the motor cycle is the tort-feaser and failed to consider the negligence of the claimant and the fact that he is responsible for the accident. The amounts granted by the Tribunal are excessive.

9.Per contra, the learned counsel appearing for the claimant contended that the Tribunal has not awarded proper compensation. The Tribunal failed to consider that claimant has taken treatment as in-patient for more than 48 days from 02.04.2013 to 30.04.2013 and 03.07.2013 to 13.07.2013, in two different periods and underwent surgeries. Even after being discharged, he is taking treatment. Due to the injuries sustained by him, the claimant is unable to do work as he was doing earlier and he has totally lost his earning capacity. In view of the nature of injuries, treatment and disability suffered by the claimant due to the injuries, multiplier method ought to have been adopted to award compensation. The amounts awarded by the Tribunal under different heads are meager and prayed for enhancement of the compensation.

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

11.From the materials on record, it is seen that the claimant was a pillion rider at the time of accident. He has stated that the 1st respondent in order to avoid hitting tricycle which suddenly came in front of the two-wheeler, applied sudden brake and claimant fell down and sustained injuries. According to the claimant, the accident occurred only due to the rash and negligent driving by the rider of the motor cycle. On the other hand, it is the case of the 2nd respondent that the rider of the motor cycle is not the tort-feaser and claimant suffered injuries only due to his own negligence and fault, as he did not hold the handles properly. The claimant examined himself as P.W.1 and deposed to the above facts. The respondents have not let in any evidence to disprove the contention of the claimant. Under such circumstances, the Tribunal appreciating the evidence of P.W.1, the claimant, held that accident occurred only due to the rash and negligent driving by the driver of the motor cycle. There is no error in the said findings.

12.As far as quantum of compensation is concerned, the Tribunal has taken into consideration the evidence of P.W.2, Doctor who deposed with regard to the nature of injuries, treatment taken and percentage of disability. From the materials on record, it is seen that the Doctor has not stated that claimant suffered functional disability and he could not do any work as he was doing earlier and totally lost his earning power. Under such circumstances, the Tribunal has rightly granted Rs.2,10,000/- as compensation, at the rate of Rs.3,000/- per percentage as per the disability certificate produced by the claimant. The learned counsel for the 2nd respondent contended that the amounts awarded by the Tribunal in different heads are excessive.

13.On the other hand, the learned counsel for the claimant contended that the claimant took treatment for more than 48 days in two different periods and underwent surgeries. In view of the same, the amounts awarded by the Tribunal are meager. This Court has carefully considered the rival contention of both the counsel for the 2nd respondent as well as the claimant and the impugned award.

14.From the impugned award, it is seen that the Tribunal has granted a sum of Rs.50,000/- towards transportation, extra nourishment and miscellaneous expenditures, considering the nature of injuries and period of treatment taken by the claimant and the same is just and reasonable and hence, it is confirmed. A sum of Rs.10,000/- granted for attender charges is meager and the same is enhanced to Rs.25,000/- and a sum of Rs.50,000/- granted for pain and suffering is enhanced to Rs.1,00,000/-. The Tribunal did not grant any amount for future medical expenses. Hence, a sum of Rs.20,000/- is granted towards future medical expenses. The Tribunal has granted a sum of Rs.32,000/- for loss of income for four months at the rate of Rs.8,000/- per month. The claimant is entitled to a sum of Rs.56,000/- for seven months at the rate of Rs.8,000/- per month. The amounts granted under all other heads are confirmed. Thus, the compensation awarded 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
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1.	Transportation, nourishing food & miscellaneous expenditure	50,000/-	50,000/-	confirmed
2.	Medical expenses	5,44,300/-	5,44,300/-	confirmed
3.	Attender charges	10,000/-	25,000/-	enhanced
4.	Pain, suffering and trauma	50,000/-	1,00,000/-	enhanced
5.	Disability	2,10,000/-	2,10,000/-	confirmed
6.	Loss of earning during the period of treatment	32,000/-	56,000/-	enhanced
7.	Loss of amenities	50,000/-	50,000/-	confirmed
8.	Future medical expenses	-	20,000/-	granted
	Total	9,46,300/-	10,55,300/-	Enhanced by - Rs.1,09,000/-

15.The 2nd respondent-Transport Corporation is directed to deposit the enhanced compensation of Rs.10,55,300/- along with accrued interest and costs to the credit of M.C.O.P.No.3035 of 2013 , on the file of the II Judge, Small Causes Court (Motor Accidents Claims Tribunal), Chennai, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire award amount, less the amount already withdrawn, if any, with accrued interest and costs, by making necessary applications before the Tribunal.

16.In the result, C.M.A.No.2137 of 2017 is partly allowed and C.M.A.No.2594 of 2018 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The II Judge,
Small Causes Court,
(Motor Accidents Claims Tribunal), Chennai.

+1 cc to M/s.S.Arunkumar, Advocate Sr.No.79114

+1 cc to M/s.C.Munusamy, Advocate Sr.No.78752

CMA.Nos.2135 of 2017 and 2594 of 2018
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SJ(CO)
CSL/10.01.2019



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