IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.Nos.2762 and 2158 of 2019
and
C.M.P.Nos.11228 and 8772 of 2019

1. Sudhakar ...Appellant in C.M.A.No. 2762 of 2019

2. Bajaj Allianz General Insurance Co., Ltd.,
2nd Floor, Khadi Bhavan,
108 TPK Road, Madurai ...Appellant in C.M.A.No. 2158 of 2019
and 2nd Respondent in CMA.2762 of 2019

Vs.

1. Vanitha .. 1st Respondent in CMA.2762 AND
2ndRespondent in CMP.2158/2019

3. Sudhakar .. 1st Respondents in C.M.A.No. 2158 of 2019

Common Prayer: These Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1000 of 2011 dated 27.07.2018 on the file of the Motor Accident Claims Tribunal / Subordinate Judge Court, Sankari.

In C.M.A.No. 2762 of 2019:

For Appellant : Mr.T.S. Arthanareeswaran

For Respondents : Mr.J. Michael Visuvasam-R2
R1 Exparte

In C.M.A.No. 2158 of 2019:

For Appellant : Mr.J. Michael Visuvasam
For Respondents : Mr.T.S. Arthanareeswaran-R1
R2 Exparte

J U D G M E N T

C.M.A.No.2762 of 2019 has been filed by the claimant to enhance the compensation amount which has been awarded in the Judgment and Decree dated 27.07.2018 made in M.A.C.T.O.P. No. 1000 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Ordinate Judge, Sankari.

2. C.M.A.No.2158 of 2019 has been filed by the Insurance Company to modify the compensation amount which has been awarded in the Judgment and Decree dated 27.07.2018 made in M.A.C.T.O.P. No. 1000 of 2011 on the file of the Motor Accident Claims Tribunal / Sub Ordinate Judge, Sankari.

3. The brief facts is as follows:

On 15.11.2011 at about 07.15 pm the claimant/injured was going near Varappalayam bus stop, A.T.C.Colony privivu road, Tiruchengode to Erode main road, in a Splendor Plus bearing Reg.No.TN-34-M-3958. At that time, Vanitha / 2nd respondent in C.M.A.No.2158 of 2019 was driving the Maruthi Swift Car bearing Reg.No.TN-34-H-7447 in a rash and negligent manner and hit the claimant's vehicle. The injured/claimant fell down on the ground and sustained grievous injuries and fracture in left leg fingers, bone fracture and injuries all over the body. Thus, the injured/claimant claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident.

4. On perusal of records it is seen that the claim is made for Rs.5,00,000/- and the Tribunal has also awarded the entire claim of Rs.5,00,000/-. But, the claimant has preferred C.M.A.No.2762 of 2019 for enhancement of compensation.

5. In the grounds of appeal in C.M.A.No.2762 of 2019, the appellant/claimant stated that at the time of accident he was working as a Library Assistant in K.S.R. College and earning Rs.10,000/- per month and due to the injuries sustained by him in the said accident and he was treated as inpatient for a long time, he was not able to continue his work after the accident. Hence, the sum awarded under the heads of Transport expenses and attender charges are very meager and loss of income has not been awarded to him. Further the loss of amenities and the pain and sufferings are not properly considered by the Tribunal. Hence on the whole, the award amount of Rs.5,00,000/- is very meager.

6. In C.M.A.No.2762 of 2019 the Tribunal after analyzing the evidence placed before it, rendered the findings that the negligent driving of the driver of the Maruti car is responsible for the accident. The Tribunal examined the injured as P.W.1 and Ex.P.1.F.I.R has been registered and Ex.P.4 rough sketch was also filed. Hence the observation of the Tribunal is only on the basis on the documents and evidence placed before it. While determining the compensation the Tribunal has also observed Ex.P.5/discharge summary which reveals that the injured was taken treatment as in-patient from 15.11.2011 to 21.11.2011. The evidence of P.W.2/Doctor who issued disability certificate has been considered by the Tribunal before passing an award of Rs.5,00,000/- as compensation to the claimants under the following heads:

S.No	Particulars	Amount
1	Loss of income	Rs.3,63,000/-
2	Medical expenses	Rs.58,000/-
3	Pain and sufferings	Rs.50,000/-
4	Transport Expenses	Rs.5,000/-
5	Extra Nourishment	Rs.15,000/-
6	Attender charges	Rs.5,000/-
7	Loss of estate	Rs.4,000/-
	Total	Rs.5,00,000/-

7. In the grounds of appeal in C.M.A.No.2158 of 2019 the Insurance Company had stated that fixing the negligence on the driver of the car is not justified and the same is contrary to both the oral and documentary evidence placed before the Tribunal. The Tribunal relied upon the document Ex.P.4 and the same was not properly appreciated by the Tribunal while fixing the negligence on the part of the driver of the car.

8. In C.M.A.No.2762 of 2019 it is seen that the Tribunal after analyzing the evidence placed before it, that the respondent/Insurance Company denied the mode of accident by way of evidence placed before the Tribunal and also the contributory recitals made in FIR, claim application and vehemently deposed that the total negligence cannot be fixed on the driver of the car. Since it is the appellant who came in the opposite direction and even before the car turned he hit the back side of the car and hence there is a contributory negligence on the part of the appellant. But those aspects were not observed and discussed by the Tribunal and the entire negligence has been fixed on the driver of the car and made this Insurance Company liable to pay compensation. Hence in view of the observations made regarding the negligent aspect by verifying the recitals in FIR and the evidence before the Tribunal it is seen that the appellant is also responsible for his negligent attitude. Hence the negligent on the part of the appellant is fixed at 20% and 80% is fixed on the driver of the car.

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

10.On perusal of the sum awarded by the Tribunal in various heads is highly excessive without any basis it is very much aggrieved by the appellant/Insurance Company that the disability is only 28% and the Tribunal has applied multiplier '18'. While discussing the multiplier method adopted by the Tribunal it is highly excessive. Hence it has to be properly considered by taking Rs.3,000/- per percentage and it has to be awarded at Rs.84,000/- (Rs.3,000/- x 28%). The sum awarded by the Tribunal towards medical expenses, based on the medical bills are very much reasonable that does not require any modification. The sum awarded by the Tribunal towards pain & suffering is also not altered. The sum awarded by the Tribunal towards extra nourishment, attendant charges and damages to articles are excessive and the same is reduced to Rs.10,000/-, Rs.3,000/- and Rs.2,000/- respectively under those heads. Thus, the modified award amount is calculated is as follows:

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by High Court
1	Loss of earnings and disability	Rs.3,63,000/-	Rs.84,000/-
2	Medical Expenses	Rs.58,000/-	Rs.58,000/-
3	Pain and sufferings	Rs.50,000/-	Rs.50,000/-
4	Transportation Charges	Rs.5,000/-	Rs.5,000/-
5	Nutrition and Extra nourishment	Rs.15,000/-	Rs.10,000/-
6	Attendant Charges	Rs.5,000/-	Rs.3,000/-
7	Damage to articles	Rs.4,000/-	Rs.2,000/-
	Total	Rs.5,00,000/-	Rs.2,12,000/-

11. Inspite of the evidence placed before the Tribunal by examining R.W.2, the negligence aspect is placed only on the part of the claimant. The dispute made by the Tribunal by fixing entire liability on this respondent is improper. The appellant Insurance company is also aggrieved that the appellant has over looked the fact that the first respondent who is the driver of the motorcycle has dashed against the left door of the car of the 2nd respondent was the cause for the accident, which was not properly appreciated by the Tribunal.

12. Inspite of the documents C.1 final report which fact clearly reveals that the accident occurred only due to the negligence on the part of the rider of the two wheeler i.e, the claimant and the said F.I.R was also closed as mistake of fact. Hence, the observation made by the Tribunal in fixing the negligence on the part of the driver of the car has to be modified.

13. In such view of the above facts, this Court is of the view that the compensation awarded by the Tribunal by considering the nature of injuries sustained by him and the occupation that he was dealing with, is not justified.

14. In the result by fixing 80% contributory negligence on the part of the appellant/Insurance Company, the C.M.A.No.2158 of 2019 is partly allowed and consequently C.M.A.No.2762 of 2019 filed by the claimant for enhancement is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

15. The Claimant/respondent in C.M.A.No.2158 of 2019 is entitled for the compensation at 80% in the modified award amount i.e, Rs.1,69,600/- and the Bajaj Allianz Insurance Company Limited is directed to deposit the modified award amount to the claimant, along 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 Judgment to the credit of M.C.O.P.No.1000 of 2011. The claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn/mtl

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankari

Copy to:

2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate, S.R.No.65486
+2cc to Mr.C.Paraneedharan, Advocate, S.R.No.66028

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(CO)
rv(01/02/2021)