

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.03.2019

Judgment Delivered on : 12.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.769 and 1099 of 2012
and

M.P.No.1 of 2012 in C.M.A.No.769 of 2012

The New India Assurance Co.Ltd.,
East Coast Chambers, 1st Floor,
No.92, G.N.Chetty Road, T.Nagar,
Chennai-600 017. ...Appellant in C.M.A.No.769 of 2012

A.Shakinsha ...Appellant in C.M.A.No.1099 of 2012

...Vs...

Respondents in C.M.A.No.769 of 2012

1.A.Shakinsha

2.D.Kumaran

3.Reliance General Insurance Co.Ltd.,
Heavitree, Unit No.1, 3rd Floor,
No.23, Spur Tank Road, Chetpet,
Chennai-600 031

4.J.Yesudhasan ... Respondents

Respondents in C.M.A.No.1099 of 2012

1.D.Kumaran

2.Reliance General Insurance Co.Ltd.,
Heavitree, Unit No.1, 3rd Floor,
No.23, Spur Tank Road, Chetpet,
Chennai - 600 031
(Respondents 1&2 given up as no relief is claimed)

3. J.Yesudhasan
(set exparte in the trial Court)

4.The New India Assurance Co.Ltd.,
East Coast Chambers, 1st Floor,
No.92, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

...Respondents

PRAYER in C.M.A.Nos.769 and 1099 of 2012: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.11.2011, in M.C.O.P.No.1583 of 2008, on the file of the Motor Accidents Claims Tribunal, (V Court of Small Causes), Chennai.

For Appellant :Mrs.Elveera Ravindran
(in C.MA.No.769/12 &
4th respondent in C.M.A.No.1099/12)

For R1 :Mrs.P.T.Saleem Fathima
(in C.M.A.No.769/12 &
appellant in C.M.A.No.1099/12)

For R1&R2 : Given up
(in C.M.A.No.1099/12 & R2&R3 in C.M.A.No.769/12)

For R3 :Ex-parte before Tribunal
(in C.M.A.No.1099/12 & R4 in C.M.A.No.769/12)

JUDGMENT

Both these Civil Miscellaneous Appeals are filed against the award passed in M.C.O.P.No.1583 of 2008. While C.M.A.No.769 of 2012 is filed by the Insurance Company on the point of quantum, C.M.A.No.1099 of 2012 is filed by the claimant for enhancement of compensation.

2. For the sake of convenience, the parties are referred to as per the ranking in C.M.A.No.1099 of 2012 filed by the claimant for enhancement.

3. The claimant filed the claim petition alleging that on 07.03.2008 at about 18:00 hours, the petitioner/claimant was riding motor cycle bearing Registration No.TN 10 K 8172 from South to North in 1st Avenue Road, Ashok Nagar, Chennai. When the petitioner/claimant was proceeding opposite to Anjappar Chettinadu Military Hotel, the Motor cycle bearing Registration No.TN 07 AR 7332 came from behind in a very high speed rash and negligent manner and dashed against the petitioner/claimant due to which, he sustained multiple fractures and injuries. The rider of the Motor cycle TN 07 AR 7332 are jointly, severally and vicariously are liable to pay compensation to the injured petitioner/claimant with interest and costs.

4. The 4th respondent/New India Assurance Company filed a counter statement before the Tribunal alleging that the accident is denied and the 3rd respondent's vehicle has been falsely implicated in the impugned accident and also in view of late F.I.R, the claim is not maintainable. The impugned accident occurred due to the negligence of the petitioner/claimant who rode the motorcycle owned by the

1st respondent in a rash and negligent manner and courted the accident and the petitioner/claimant had equally contributed to the accident by his negligent act and the claim is exorbitant.

5. Before the Tribunal P.W.1, the claimant was examined, besides P.W.2 and P.W.3 were examined. Ex.P-1 to P-14 were marked on the side of the claimant. No oral or documentary evidence was adduced on the side of the respondents before the Tribunal.

6. The Tribunal has awarded a sum of Rs.3,73,500/- with interest at 7.5% per annum and hence, these two appeals, one in C.M.A.No.769 of 2012 by the New India Assurance Company challenging the award of compensation and other C.M.A.No.1099 of 2012 by the claimant was filed seeking enhancement of compensation.

7. Heard both sides and perused the records.

8. In support of the claim petition, it appears that P.W.1 that the driver of the offending motorcycle vehicle bearing Registration No. TN 07 AR 7332 was negligent due to which, accident had occurred. In Exhibit P1-FIR it is mentioned so. It is also supported by Ex.P2-Sketch. Further, P.W.3 who is the police official has been examined and Ex.P13 the copy of case diary and Ex.P14 copy of charge sheet are marked. It is also the case of the petitioner/claimant that he was in possession of a valid driving license and only the driver of the offending vehicle was negligent.

9. From Ex.P3 that the petitioner/claimant was in possession of a valid driving license. As the driver of the offending vehicle was found to be negligent for the accident, a criminal case registered against him for the offence of rash and negligent driving and causing injuries.

10. On the anvil of cross examination P.W.1 has stood firm with regard to negligence of the driver. In rebuttal, insurer has not examined any witnesses with regard to negligence. The driver of the offending vehicle has not entered the witness box. The cumulative effect of the above shows that the accident had taken place due to the negligence on the part of the driver of the offending vehicle.

11. The 4th respondent/Insurance Company has not proved with evidence that the offending vehicle was plied without valid insurance coverage, permit, fitness certificate and the driver didn't possess valid driving license. It is not at all in dispute that the 3rd respondent is the owner of the offending vehicle. It is the contention of the petitioner/claimant that the said vehicle was insured with the 4th respondent vide policy No.618062 valid from 15.02.2008 to

14.02.2009 at the time of accident. It has not been rebutted or refuted by the 4th respondent and therefore, it is held that the offending vehicle was insured with the 4th respondent at the time of accident.

The compensation is payable jointly and severally by the respondents 3&4 to the petitioner/claimant. As the offending vehicle was insured with the fourth respondent, the compensation amount has to be paid by the 4th respondent to the petitioner/claimant on behalf of the 3rd respondent.

12. The Tribunal has rightly held that the accident has taken place due to the rash and negligent driving of the third respondent's vehicle by its driver and hence, the finding of rash and negligence on the part of the third respondent vehicle's vehicle, which is insured with the 4th respondent-New India Assurance Company, by the Tribunal is well merited and well considered and the same does not warrant any interference.

13. On the point of quantum, the appellant in C.M.A.No.769 of 2012 have filed Interlocutory Applications before the Tribunal and sought the permission of the Tribunal under Section 170 of the Motor Vehicle Act to implead the insurer and the said I.As. were allowed.

14. P.W.2 Doctor had deposed that the petitioner/claimant sustained compound fracture of both bones in right leg and bone grafting and nailing was done and that the movement of the leg is restricted and the bones are malunited and the petitioner/claimant has got difficulty in squatting and walking. From the nature injuries and evidence of the Doctor, it is clear that as a Supervisor the petitioner could not do the field work as in the past and do the work with some difficulties and therefore, the petitioner/claimant has partly lost his earning power.

15. Furthermore, Ex.P9-Disability Certificate that the petitioner had sustained Grade III compound fracture of both bones right leg M/3 D/3 and surgery was performed with nails, now the fractured bones of the petitioner are malunited, right knee movements are restricted and the petitioner has got difficulty in squatting and walking and the Doctor has also stated that the petitioner has got a disability of 30%. It is supported by Ex.P10, P11 and P12-X-ray films.

16. Thus, this Court finds that due to the injuries sustained by P.W.1, who suffered functional disability to the tune of 30% and it is also seen that he has suffered Grade-III compound fracture of both bones on the right leg M/3,D/3 and taking into consideration the evidence of P.W.2 Doctor coupled with Ex.P9 disability certificate and Exs.P5 and P6/Discharge Summary, this Court is of the considered view that the essential criteria stated in Rajkumar's case by the Supreme

Court in Rajkumar Vs. Ajaykumar & another case reported in 2010 (2) TN MAC 581 SC to award compensation by applying multiplier method for sustaining disability as functional disability, is being satisfied and the multiplier method has to be adopted.

17. Notional income of Rs.4,000/- p.m. fixed by the Tribunal is hereby confirmed. As the injured is aged about 26 years at the time of accident, the multiplier of '18' is to be adopted and Rs.1,500/- is awarded for future prospects have to be added towards his salary. Thus, the compensation for permanent disability is re-assessed as under:-

$$6000 \times 18 \times 30\% \times 12 = \text{Rs.}3,88,800/-$$

18. From Exs.P-5 and P-6 discharge summary, it is seen that the claimant-injured was in hospital for a period of 11 days and he underwent surgery on 14.08.2018 and accordingly, for 'pain and suffering', the amount awarded by the Tribunal is hereby confirmed. The amounts awarded by the Tribunal under the heads 'medical expenses', 'extra-nourishment', 'attender charges' and 'damages to clothes' are hereby confirmed. The award of the Tribunal under the head 'Transportation' is enhanced from Rs.5,000/- to Rs.10,000/-. Further, the amount of Rs.15,000/- is hereby awarded 'for loss of amenities'. As the injured-claimant was a Bachelor, for the 'marriage prospects', this Court awards a sum of Rs.25,000/-. In respect of the 'loss of income' during the period of treatment for four months, a sum of Rs.18,000/- (4500 x 4) is hereby awarded.

19. The break up details of the enhanced compensation amount are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent disability	Rs.2,43,000/-	Rs.3,88,800/-
Pain and suffering	Rs.30,000/-	Rs.30,000/-
Medical expenses	Rs.64,500/-	Rs.64,500/-
Extra-nourishment	Rs.15,000/-	Rs.15,000/-
Transport to hospital	Rs.5,000/-	Rs.10,000/-
Damages to clothes	Rs.1,000/-	Rs.1,000/-
Attender charges	Rs.15,000/-	Rs.15,000/-
Loss of income during treatment period	-	Rs.18,000/-

Towards marriage prospects	-	Rs.25,000/-
Loss of amenities	-	Rs.15,000/-
Total	Rs.3,73,500/-	Rs.5,82,300/- with 7.5% interest

20. In the result:-

(i) C.M.A.No.1099 of 2012 filed by the claimant is partly allowed to the extent indicated above and C.M.A.No.769 of 2012 filed by the Insurance Company is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(ii) The appellant-New India Assurance Company is directed to deposit the entire compensation, including interest at 7.5 % from the date of claim petition till the date of payment, and costs, as awarded by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount, if any already deposited.

(iii) On such deposit, the claimant is permitted to withdraw the compensation amount in accordance with law.

(iv) The appellant/claimant in C.M.A.No.1099 of 2012 is directed to pay necessary Court fee, if any, on the enhanced compensation.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
(V Court of Small Causes), Chennai.

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

+1cc to Mr.P.T.Saleem Fathima, Advocate, S.R.No. 58998

+1cc to Mr.Elveera Ravindran, Advocate, S.R.No. 59273

C.M.A.Nos.769 and 1099 of 2012 and
M.P.No.1 of 2012 in C.M.A.No.769 of 2012

KJI (CO)

CN(15/11/2019)

<https://hcservices.recourts.gov.in/hcservices>