IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.1467, 1468 and 1689 of 2018
and CMP No.11678 of 2018

C.M.A.No.1467 of 2018:

P.V.Kalyana Sundaram ... Appellant /1st Respondent

Vs.

1.K.Balakrishnan ... 1st Respondent/Claimant

2.M/s.Iffco Tokyo General Insurance Company Limited,
John Towers, 2nd Floor,
New No.24, Old No.302, LIC Colony
Salem - 4. ...2nd Respondent/2nd Respondent

C.M.A.No.1468 of 2018:

P.V.Kalyana Sundaram ... Appellant /1st Respondent

Vs.

1.Mohankumar ...1st Respondent/Claimant

2.M/s.Iffco Tokyo General Insurance Company Limited,
John Towers, 2nd Floor,
New No.24, Old No.302, LIC Colony
Salem - 4. ...2nd Respondent/2nd Respondent

C.M.A.No.1689 of 2018:

K.Balakrishnan ... Appellant /Respondent

Vs.

1.P.V.Kalyana Sundaram

2.M/s.Iffco Tokyo General Insurance Company Limited,
John Towers, 2nd Floor,
New No.24, Old No.302, LIC Colony
Salem - 4. ...Respondents/Respondents

CMA Nos.1467 and 1468 of 2018 filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem in MACTOP Nos.83 and 84 of 2011 dated 20.03.2015.

CMA No.1689 of 2018 filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem in MACTOP No.83 of 2011 dated 20.03.2015.

C.M.A.Nos.1467 and 1468 of 2018:

For Appellant : Mr.M.Devaraj
For R1 : Mr.T.Ananthasekar in CMA.1467/2018
For R2 : Mr.C.R.Krishnamoorthy (in both)

C.M.A.No.1689 of 2018:

For Appellant : Mr.T.Ananthasekar
For R1 : Mr.M.Devaraj
For R2 : Mr.C.R.Krishnamoorthy

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed against the judgment and decree dated 20.03.2015 made in MCOP Nos.83 & 84 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.2, Salem.

2.All these three appeals arise out of the same accident and common award and hence they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petitions for the sake of convenience.

3.The claimants filed M.C.O.P.Nos.83 and 84 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge No.2, Salem claiming a sum of Rs.20,00,000/-and Rs.5,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 05.11.2010.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred due to the rash and negligent driving of the driver of the car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.4,23,000/- and Rs.42,000/- with interest at the rate of 7.5% per annum from the respective dates of petitions, as compensation to the claimants in MCOP Nos.83 and 84 of 2011 respectively, at the first instance and permitted the Insurance Company to recover the same from the 1st respondent/owner of the vehicle, thereafter.

5.Questioning the liability as well as the quantum of compensation awarded by the Tribunal, the first respondent/owner of the vehicle has filed CMA Nos.1467 and 1468 of 2018. Being dissatisfied with the quantum so awarded by the Tribunal in MCOP No.83 of 2011, the claimant has filed CMA No.1689 of 2018.

6.The learned counsel appearing for the first respondent/owner of the vehicle contended that the Tribunal has failed to appreciate the evidence of the claimants in a proper perspective and had come to the conclusion that the accident had occurred due to rash and negligent driving of the driver of the car belonging to the first respondent. The rough sketch as well as the Motor Vehicle Inspector's Report would clearly show that the accident had not happened as deposed by Pws.1 and 2. In the absence of any material evidence, the monthly income of the claimants fixed by the Tribunal is without any basis. In any event, the amounts awarded by the Tribunal under other heads are also on the higher side and accordingly prayed for dismissal of the claim petitions against the 1st respondent.

7.Per contra, the learned counsel appearing for the claimants contended that the Tribunal, after analysing the materials available on record, rightly fixed the liability on the 1st respondent/owner of the vehicle and directed the 2nd respondent / insurance company to pay compensation to the claimants at the first instance and recover the same from the 1st respondent/owner of the vehicle. The learned counsel further contended that the Tribunal failed to note that the disability sustained by the claimant in MCOP No.83 of 2011 would affect his future earning capacity. The claimant is a tailor by profession and due to the multiple injuries, his entire earning capacity has been affected. The Tribunal ought to have adopted multiplier method for calculating loss of future earning capacity. The learned counsel further submitted that the Tribunal has not awarded any amount towards future medical expenses. Further, the compensation awarded under other heads are also very meagre and hence, the same needs substantial enhancement.

8.Heard the learned counsel appearing for the claimants, 1st respondent/owner of the vehicle as well as the 2nd respondent-Insurance Company and perused the materials available on record.

9.From the materials available on record, it is seen that the Tribunal, after analysing the oral and documentary evidence, has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car belonging to the 1st respondent and as insurer of the vehicle, directed the 2nd respondent / insurance company to pay compensation to the claimants at the first instance and recover the same from the 1st respondent / owner of the vehicle, for violation of policy conditions. Considering all the facts in entirety, this Court is not inclined to interfere with the said finding of the Tribunal.

10.It is the contention of the learned counsel for the claimants that the claimant in MCOP No.83 of 2011 is a tailor by profession and was earning a sum of Rs.40,000/- per month. However, from the materials available on record, it is seen that no supporting documents were filed to substantiate the said contention. In the absence of any material evidence to substantiate the claim of the claimant, the Tribunal rightly fixed the monthly income of the claimant at Rs.8,000/- and awarded a sum of Rs.96,000/- (Rs.8000 x 12) towards loss of income for 12 months. Considering the evidence of PW3-Doctor and Ex.P5 - Disability Certificate, the Tribunal fixed the disability sustained by the claimant at 47% and awarded a sum of Rs.1,41,000/- towards permanent disability by awarding a sum of Rs.3000/- per percentage of disability which in the opinion of this Court is just and reasonable. Further, the amounts awarded by the Tribunal under other heads are just and reasonable. Even in respect of MCOP No.84 of 2011, the Tribunal has correctly arrived at the compensation by relying upon the materials and evidence available on record in a proper perspective. In such view of the matter, this Court is not inclined to interfere with the awards of the Tribunal.

11.In the result, all the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.The 2nd respondent-Insurance Company is directed to deposit the entire compensation amounts as awarded by the Tribunal, along with interest and costs, less the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimants are permitted to withdraw the same on making proper application before the Tribunal.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

rgr/km

To

1.The Special Subordinate Judge II,
Motor Accidents Claims Tribunal,
Salem.

Copy to:
2.The Record Keeper,
V.R.Section,
High Court,
Chennai.

+2cc to Mr.M.Devaraj, Advocate, S.R.No.93661, 93662
+1cc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.93570

C.M.A.Nos.1467, 1468 and
1689 of 2018

BS(CO)
CB(01/09/2020)