IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. Nos.1151 and 2544 of 2017

C.M.A. Nos.1151 of 2017

1.D.Ragavan, aged about 50 years,
son of Duraisamy, represented by his next friend
and his wife Nalini Ragavan, aged about 43 years,
Residing at No.208-B, Thamarai Avenue,
Sakthi Nagar East, Thindal, Erode.
(Amended as per order in
I.A.No.947/2015 dated 16.6.2015) : Appellant/Petitioner

Vs.

1.C.Ponnuswamy

2.The Oriental Insurance Company Limited,
6/3, 6/4, Subramaniapuram-637 015. :Respondents/Respondents

C.M.A. No.2544 of 2017

The Oriental Insurance Company Limited,
6/3, 6/4, Subramaniapuram-637 015. :Appellant/2nd Respondent

Vs.

1.D.Ragavan, aged about 50 years,
son of Duraisamy, represented by his next friend his
wife Nalini Ragavan. : 1st Respondent/Petitioner

2.C.Ponnuswamy : 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.12.2016 made in M.C.O.P.No.448 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) Erode.

For Appellant : Mr.K.Varadhakamaraj
in CMA.No.1151/2017
& 1st respondent in
CMA.No.2544/2017

For Appellant in : Mr.Elveer Ravindran
CMA.No.2544/2017
& 2nd respondent in
CMA.No.1151/2017

For 1st respondent in : No appearance
CMA.No.1151/2017 &
2nd respondent in
CMA.No.2544/2017

COMMON JUDGMENT
(Judgment of the Court was delivered by M.M.Sundresh,J.)

As both the appeals arise from the same award, they have been taken up together and disposed of by way of a common judgment.

2. A claim petition has been filed in M.C.O.P.No.448 of 2014 on the file of the Motor Accidents Claims Tribunal (Special District Court)

Erode, by the claimant seeking compensation of Rs.55,75,000/-. It is the case of the claimant that on 05.09.2013 when he was going on Perundurai Main Road in his Honda Activa Scooter bearing Registration No.TN-56-D-2118, a Tata Indica car bearing Registration No.TN-28-AM 9230, which was driven by the first respondent in a rash and negligent manner and dash against him and caused head injury and multiple grievous injuries.

3.Before the Tribunal, the claimant was represented by his wife as he was reportedly in vegetative condition. On the side of the claimant, P.Ws. 1 to 8 were examined and Exs.P1 to P61, including police records, Court records, income tax returns and medical bills, were marked. On the side of the respondents R.Ws.1 and 2 were examined and Exs. R1 to R6 were marked. Through Court, Ex.C1, which is the First Information Report has been marked.

4.P.W.1 is the wife of the claimant. P.W.2 is the eye witness to the occurrence. P.W.3 is the Doctor. The Tribunal held that the accident had occurred due to the rash and negligent driving of the driver of the car bearing registration

No.TN-28-AM 9230 and fixed the liability on behalf of the appellant-Insurance company in C.M.A.No.2544 of 2017, being the insurer. The evidence of P.W.2, who was an eye witness, has been taken into consideration while arriving at the above conclusion and thereafter, analysing the voluminous documents, coupled with the evidence to two Doctors, who deposed in favour of the claimant, the compensation has been fixed. Challenging the aforesaid award, both on the question of law and quantum, C.M.A.No.2544 of 2017 has been filed. Seeking enhanced compensation with much reliance upon the additional documents sought to be marked, C.M.A.No.1151 of 2017 has been filed.

5.The learned counsel appearing for the appellant-Insurance company in C.M.A.No.2544 of 2017 would submit that even the documents produced by the claimant under Exs.P10, P11 and P13 would show that he was suffering from other ailments viz., heart disease, hyper tension and diabetic and after discharged from the hospital, he fell down and sustained injuries. Therefore, the compensation fixed is on the higher side. The evidence of P.W.2 ought not to have been relied upon. He is an interested witness. Therefore, the appeal requires to be allowed.

6.The learned counsel appearing for the appellant/claimant in C.M.A.No.1151 of 2017 would submit that the additional documents sought to be marked would show that the claimant is under vegetative condition and requiring continuous treatment and the said documents would show the treatment given along with the cost incurred. The Tribunal rightly considered the evidence of P.W.2. Merely because P.W.2 is known to the claimant, his evidence cannot be eschewed. The income particulars have been rightly taken into consideration by the Tribunal. Therefore, while approving the reasons given by the Tribunal, sufficient amount will have to be given for the continuous treatment.

7.On the question of liability, much reliance has been made on the evidence of P.W.2 by the Tribunal. Merely because P.W.2 is the driver, his evidence cannot be discredited. He alone took the claimant to the hospital on 05.09.2013, but the complaint has been given two days thereafter. The non giving of complaint by P.W.1 would not make his evidence untrustworthy. The proceeding initiated under Criminal Procedure Code is different from seeking compensation. In such view of the matter, we do not find any error in arriving at the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the car and fixing the liability on the insurer, the appellant-Insurance company in C.M.A.No.2544 of 2017.

8.On the question of quantum, we are in agreement with the award passed by the Tribunal. The claimant is in vegetative condition is not in dispute. Admittedly, he is an income tax assessee. In such a case, certainly more compensation is required to be given even then a case involving a fatal accident. We also perused the documents filed by the claimant seeking to mark them as additional documents. Inasmuch as, they are medical bills, we are not inclined to get the document admitted apart from letting in evidence on behalf of the same. However, considering the condition of the claimant, though a sum of Rs.58,01,975/- has been awarded by the Tribunal, we are inclined to enhance the compensation to Rs.65 lakhs, especially, the claimant was also suffering from some other ailment even at the time of the accident. Accordingly, the compensation arrived at by the Tribunal is enhanced to Rs.65 lakhs with interest at 7.5% per annum and C.M.A.No.1151 of 2017 filed by the claimant stands allowed to the extent indicated above. C.M.A.No.2544 of 2017 filed by the Insurance company stands dismissed.

.9.The appellant-insurance company in C.M.A.No.2544 of 2017 is directed to deposit the enhanced compensation awarded along with accrued interest, less the amount, if any already deposited, to the credit of M.C.O.P.Nos.448 of 2014 on the file of the Motor Accident Claims Tribunal (Special District Court) at Erode within a period of six weeks from the date of receipt of a copy of this judgment.

10.We also direct the Tribunal to transfer the entire amount awarded along with proportionate interest at 7.5% per annum by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

raa

To

The Motor Accident Claims Sub Court,
(Special District Court) at Erode.

+1cc to Mr.K.Varadhakamaraj, Advocate, SR.No.104729.
+2cc to Mr.Elveer Ravindran, Advocate, SR.No.104842 & 104843.

C.M.A. Nos.1151 and 2544 of 2017

JP(CO)
CSR: 18.03.2020