IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

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

C.M.A.NOS.2833 & 3197 OF 2017

A.Natarajan ... Appellant in CMA 2833/17 /Petitioner in M.C.O.P.

... 1^{st} Respondent in CMA 3197/17

Vs.

K.Munusamy ... 1^{st} Respondent in CMA 2833/17
... 2^{nd} Respondent in CMA 3197/17 /1^{st} Respondent in M.C.O.P

The Oriental Insurance Co.Ltd.,
Motor Third Party Claims Office - HUB,
No.216, Prakasam Salai,
Broadway, Chennai - 600 108.
... 2^{nd} respondent in CMA 2833/17
... Appellant in CMA 3197/17 /2^{nd} Respondent in M.C.O.P

Prayer :
Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MACT O.P.No.6206 of 2014 dated 18.04.2017, on the file of Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant in CMA 2833/17 and for 1^{st} respondent in CMA 3197/17 : Mr.M.Swamikkannu

For 2^{nd} respondents in CMA 2833/17 and for appellant in CMA 3187/17 : Mr.N.Vijayaraghavan

For Appellant in CMA 2833/17 and for 1st respondent in CMA 3197/17	:	Mr.M.Swamikkannu
For 1st respondent in CMA 2833/17 and for 2nd respondent in CMA 3197/17	:	Ex-parte / Notice sent

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

As both the appeals emanate from a common award, they are taken up together and disposed of by a common judgment.

2. C.M.A No.2833 of 2017 has been filed for enhancement of compensation whereas C.M.A.No.3197 of 2017 has been filed challenging the liability and quantum.

3. For the sake of convenience, we will take C.M.A.No.3197 of 2017 with the parties as arrayed there under.

4. The appellant is the insurer questioning the liability and quantum. The first respondent is the Driver of the motor vehicle bearing Registration No.TN-02-AC-6907 which met with an accident with Tata Ace bearing Registration No.TN-10-T-6436 insured with the appellant. Seeking compensation, the first respondent filed a claim petition in M.C.O.P.No. 6206 of 2014.

5. Before the Tribunal, the appellant contended that the FIR and the charge sheet would clearly show that the mistake was on the part of the first respondent. He had also paid fine thereafter. However, the Tribunal placing reliance upon the evidence of P.W.1, who is none other than the first respondent and holding that there is no contra evidence was placed to fix the negligence on the part of the vehicle which has been insured with the appellant and thereafter proceeded to fix the compensation.

6. The learned counsel appearing for the appellant would submit that the payment of fine is not in dispute and the Tribunal has committed an error in fixing the liability on the appellant. The amount fixed by way of compensation is also excessive.

7. The learned counsel appearing for the first respondent would submit that P.W.3 has deposed that the case was not over. Here, it is a case where there is no contra evidence to discredit and disprove the evidence of the claimant/ first respondent. On the question of compensation fixed, there is a disfigurement of evidence being taken into consideration by the Tribunal. Therefore, the same will have to be enhanced.

8. Even in the counter affidavit filed on 03.06.2015, the appellant has taken a specific plea to the effect that the FIR and charge sheet would indicate the person who is responsible for the accident, namely, the first respondent being the claimant but he also did paid the fine amount. The Tribunal ignored the aforesaid aspect and made reliance upon the evidence of P.W.3. The oral evidence of P.W.3 cannot go against the record. The claimant/1st respondent did not even dispute the statement made in the counter affidavit filed by the appellant which was also taken into consideration by this Court. However, we find that the same by itself cannot be a sole factor to fix the liability on the part of the first respondent.

9. We are also dealing with a case where the first respondent/claimant did suffer injuries including fracture apart from physical disfigurement. In such view of the matter and in order to meet the ends of justice, while confirming the compensation arrived at by the Tribunal, we fix the liability on the part of the appellant at 75%. Accordingly, the appellant is directed to pay Rs.2,49,375/- along with the proportionate interest.

10. In the result, C.M.A. No. 3197 of 2017 stands allowed to the extent indicated above and C.M.A. No. 2833 of 2017 stands dismissed. No costs. Consequently, connected C.M.P.No. 19666 of 2017 is closed.

*** 11. We direct the appellant-Oriental Insurance Company Limited in C.M.A.No.3197 of 2017 to deposit a sum of Rs.2,49,375/- along with the proportionate interest, if not already deposited, to the credit of MACTOP.No.6206 of 2014 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment. This Court directs the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks thereafter. On such transfer, the claimant is entitled to withdraw the same. The appellant-Oriental Insurance**

Company Limited in C.M.A.No.3197 of 2017 is entitled to withdraw the remaining 25% amount.

Sd/-
Assistant Registrar(CS VI)

***Corrected as per the Order of this Court dated 23.12.2020 made in CMA.No.2833 & 3197 of 2017**

//True Copy//

Sub Assistant Registrar

ssm

To

The Presiding Officer,
Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.101540
+2cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.102165 & 102166

C.M.A.Nos.2833 & 3197 of 2017

KJ(CO)
CS/25/01/2021