



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2975 of 2017

and

C.M.P.No.17459 of 2017

Reliance General Insurance Company Limited,
Reliance Centre, 19, Walchand,
Hirachand Marg, Ballard Estate,
Mumbai - 400 001.

.. Appellant/2nd Respondent

Vs.

1.Ramasamy

..1st Respondent/Claimant

2.M/s.Kandhan Traders, No.162,
Selva Vinayagar Street,
Puliyanthangal, Sipcot,
Ranipet, Walaja Taluk,
Vellore District.

3.S.Kumarasamy

4.Cholamandalam MS General Insurance Co. Ltd.,
Pookkara Lane, Madurai - 625 001.

.. 2 to 4 Respondents/R1, R3 & R4

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.06.2015 made in M.C.O.P.No.2512 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.P.Suresh for
Mr.K.Moorthy

For R1 : Mr.Panchatcharam

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 05.06.2015 made in M.C.O.P.No.2512 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.



2.The appellant is the second respondent in M.C.O.P.No.2512 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The first respondent filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.09.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed the appellant-Insurance Company, being the insurer of the lorry to pay a sum of Rs.12,95,291/- as compensation to the first respondent.

4.Against the said award dated 05.06.2015 made in M.C.O.P.No.2512 of 2013, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the lorry belonging to the second respondent. The Tribunal failed to note that it was the first respondent who drove the Tata Ace belonging to the third respondent, insured with the fourth respondent in a rash and negligent manner and dashed on the backside of the lorry belonging to the second respondent. The Tribunal erred in fixing 70% negligence on the part of the driver of the lorry, which is not in consistent with nature of the accident. The Tribunal failed to note that the first respondent failed to prove his employment with any documentary evidence. A sum of Rs.12,95,291/- awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that the driver of the lorry belonging to the second respondent drove the lorry in a rash and negligent manner and suddenly stopped the lorry without any signal, in order to verify the address from a pedestrian. Due to such negligent act of the driver of the lorry, the accident has occurred. The first respondent has examined himself as P.W.1 and marked F.I.R. as Ex.P1 and proved his case. The appellant and the second respondent did not let in any evidence to disprove the contention of the first respondent and to prove their contention that the accident occurred only due to rash and negligent driving by the first respondent. In the accident both the legs of the first respondent was crushed and he was caught between the lorry and Tata Ace. The Police had to cut the door of the vehicle and take the first respondent from the Tata Ace.



He has suffered fracture and serious grievous injuries and has taken treatment as in-patient in the hospital at Salem and Bangalore. He suffered 60% disability and proved the same by examining P.W.2/Doctor. The Tribunal reduced the percentage of disability to 50% without any reason. The first respondent was earning a sum of Rs.10,000/- per month as a driver. The Tribunal erroneously fixed a meager sum of Rs.5,000/- as monthly income of the first respondent and granted only a meager sum of Rs.12,95,291/- as total compensation and prayed for enhancement of compensation.

7. Heard the learned counsel appearing for the appellant as well as the first respondent and perused the entire materials on record.

8. It is the contention of the first respondent that the accident has occurred only when the driver of the lorry belonging to the second respondent going in front of Tata Ace driven by the first respondent, suddenly stopped without any signal to verify the address. To substantiate the same, the first respondent has examined himself as P.W.1 and deposed the manner in which the accident has occurred. F.I.R. was registered against the driver of the lorry. F.I.R. was marked as Ex.P1. The appellant and second respondent did not let in any evidence to disprove the contention of the first respondent. The Tribunal considering the evidence of P.W.1, F.I.R. and failure on the part of the appellant and second respondent to let in any evidence to disprove the contention of the first respondent, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the second respondent insured with the appellant. The Tribunal has given a cogent and valid reason for the said finding. There is no error in the said finding of the Tribunal warranting interference by this Court.

9. As far as quantum of compensation is concerned, the first respondent has contended that his both legs were crushed in the accident and he suffered fracture in the right thigh and grievous injuries in the left leg and all over the body. The first respondent has taken treatment as in-patient in Chellappa Hospital, Salem, from 29.09.2012 to 07.10.2012. He further taken treatment as in-patient in Hosmat Hospital, Bangalore and produced wound certificate and two discharge summaries and Ex.P14/disability certificate and examined P.W.2/Doctor. P.W.2/Doctor assessed that the first respondent suffered 60% disability. The Tribunal has reduced the percentage of disability to 50%, stating that in view of Exs.P2 to P4 and P13, the disability is fixed at 50%. The said reason given by the Tribunal for reducing the percentage of disability is not correct and the first respondent is entitled to compensation for



60% disability. The first respondent contended that he was working as a driver and was earning a sum of Rs.10,000/- per month. The Tribunal has fixed a sum of Rs.5,000/- as monthly income of the first respondent. The accident occurred in the year 2012 and the monthly income fixed by the Tribunal is meager. The first respondent was aged 26 years at the time of accident. The Tribunal has not granted any amount towards future prospects. A sum of Rs.7,500/- including future prospects is fixed as monthly income of the first respondent. The amount awarded by the Tribunal towards loss of earning capacity is modified to Rs.8,10,000/- [Rs.7,500/- X 12 X 15 X 60/100]. The Tribunal has awarded a sum of Rs.15,000/- towards partial loss of earning for three months at the rate of Rs.5,000/- per month, which is meager and the same is hereby enhanced to Rs.22,500/- [Rs.7,500/- X 3]. Considering the nature of injuries and avocation of the first respondent, this is a fit case for invoking discretionary power under Order 41 Rule 33 to enhance the compensation, even without filing any appeal or cross objection. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	5,10,000/-	8,10,000/-	Enhanced
2.	Partial loss of income	15,000/-	22,500/-	Enhanced
3.	Pain and suffering	50,000/-	50,000/-	Confirmed
4.	Extra nourishment and transportation	20,000/-	20,000/-	Confirmed
5.	Medical expenses	5,40,291/-	5,40,291/-	Confirmed
6.	Future medical expenses	1,00,000/-	1,00,000/-	Confirmed
7.	Attendant charges	10,000/-	10,000/-	Confirmed
8.	Loss of amenities	50,000/-	50,000/-	Confirmed
	Total	Rs.12,95,291/-	Rs.16,02,791/-	enhanced by Rs.3,07,500/-



10. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.12,95,291/- is hereby enhanced to Rs.16,02,791/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The first respondent is directed to pay the Court fee, if any on the enhanced amount of compensation. The appellant-Insurance Company is directed to deposit the enhanced award amount now determined by this Court, 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. On such deposit, the first respondent is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rgr/krk

To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

+1cc to Mr.K.Moorthy, Advocate SR.No.42826

C.M.A.No.2975 of 2017
and
C.M.P.No.17459 of 2017

SSV(CO)
GMY(14/08/2019)