IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2865 of 2015 and 2092 of 2017
&
C.M.P.No.11076 of 2017

C.M.A.No.2865 of 2015:

Ramasamy .. Appellant/Petitioner

Vs.

1.Murugesan Perumal

2.The Oriental Insurance Company Limited,
Extension Counter, Saravana Arcade,
Near Sub-Registrar Office,
Avinashi – 641 654. .. Respondents/Respondents

(Since quantum alone is disputed,
notice to the 1st respondent dispensed with)

C.M.A.No.2092 of 2017:

The Oriental Insurance Company Limited,
Extension Counter, Saravana Arcade,
Near Sub-Registrar Office,
Avinashi – 641 654. .. Appellant/2nd Respondent

Vs.

1.Ramasamy ..Respondent/Petitioner

2.Murugesan Perumal .. Respondents/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.06.2015 made in M.C.O.P.No.1138 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

C.M.A.No.2865 of 2015:

For Appellant : Mr.Ma.P.Thangavel
For R2 : Mr.S.Arunkumar

C.M.A.No.2092 of 2017:

For Appellant : Mr.S.Arunkumar
For R1 : Mr.Ma.P.Thangavel

C O M M O N   J U D G M E N T

C.M.A.No.2865 of 2015 is filed by the claimant for enhancement of compensation and C.M.A.No.2092 of 2017 is filed by the 2nd respondent-Insurance Company challenging the quantum of compensation granted by the award dated 03.06.2015 made in M.C.O.P.No.1138 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal.

2.Both the Civil Miscellaneous Appeals are arising out of the same award and hence, they are disposed of by this common judgment. The parties are referred to as per their rank in the claim petition, for the sake of convenience.

3.The claimant 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 12.09.2012.

4.According to the claimant, on 12.09.2012 at about 05.00 P.M., while the claimant was riding in his motorcycle on the extreme left side of Koothampalayam – Sillangadu main road, the driver of the omni car belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the claimant and caused the accident. In the said accident, the claimant sustained multiple injuries all over his body and fracture on his right femur and immediately he was admitted in Government Hospital, Tiruchengode for first aid and then he was shifted to Ganga Hospital, Coimbatore for treatment. The claimant was aged 37 years at the time of accident and was a driver earning a sum of Rs.15,000/- per month. Due to the injuries sustained by him in the accident, he could not able to do the normal work. Therefore, the claimant filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him against the respondents 1 and 2, being the owner and insurer of the omni car.

5.The 1st respondent-owner of the omni car filed counter statement and denied all the averments made by the claimant. According to the 1st respondent, the claimant only drove his motorcycle in a rash and negligent manner and dashed against the omni car and invited the accident. Hence, the accident occurred only due to negligence on the part of the claimant. Therefore, the 1st respondent is not liable to pay any compensation to the claimant. The omni car was insured with the 2nd respondent-

Insurance Company at the time of accident. Therefore, the 2nd respondent-Insurance Company is only liable to pay the compensation to the claimant. The claimant have to prove his age, avocation and income by producing valid documents. In any event, the quantum of compensation claimed by the claimant is extremely high and prayed for dismissal of the claim petition.

6.The 2nd respondent-Insurance Company filed counter statement and denied all the averments made by the claimant. According to the 2nd respondent-Insurance Company, the claimant only came in a rash and negligent manner and hit the omni car on the left side front door and invited the accident. Further, the driver of the omni car was not possessing valid driving license at the time of accident. Hence, the 2nd respondent-Insurance Company is not liable to pay any compensation to the claimant. The 1st respondent/owner of the omni van alone is liable to pay the compensation. The injuries sustained by the claimant are false in nature and the claimant has not suffered any disability. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Sivakumar was examined as P.W.2 and 12 documents were marked as Exs.P1 to P12. On behalf of the respondents, one Santhi, typist was examined as R.W.1 and Assistant Manager of the 2nd respondent-Insurance Company was examined as R.W.2 and 2 documents were marked as Exs.R1 and R2.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the omni car belonging to the 1st respondent and directed the 2nd respondent-Insurance Company, being the insurer of the omni car to pay a sum of Rs.10,29,400/- as compensation to the claimant at the first instance and then recover the same from the 1st respondent.

9.Challenging the quantum of compensation granted by the award dated 03.06.2015 made in M.C.O.P.No.1138 of 2013, the 2nd respondent-Insurance Company has come out with the appeal in C.M.A.No.2092 of 2017 and the claimant has come out with the appeal in C.M.A.No.2865 of 2015 for enhancement of compensation.

10.The learned counsel appearing for the claimant contended that the deceased was aged 37 years at the time of accident and was a driver earning a sum of Rs.15,000/- per month. But, the Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income of the claimant. The Tribunal ought to have fixed a sum of Rs.15,000/- per month as notional income and awarded compensation. The claimant sustained multiple injuries and fracture in right femur and right thigh and a surgery was conducted and plates and screws were fixed. P.W.2/Doctor certified that the claimant sustained 48% permanent disability and he cannot continue his avocation as driver as he was doing earlier. Therefore, the Tribunal ought to have granted compensation for 100% earning capacity. The Tribunal has not awarded any amounts towards future prospects, future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for allowing C.M.A.No.2865 of 2015 and dismissal of C.M.A.No.2092 of 2017.

11.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the Tribunal erred in relying on the unscientific assessment of P.W.2/Doctor and Ex.P12/disability certificate, where there is no calculation sheet and guidelines for assessment of disability. The claimant has not produced any material evidence with regard to his avocation and income. In the absence of any material evidence with regard to avocation and income, a sum of Rs.10,000/- per month fixed by the Tribunal as notional income of the claimant is highly excessive. The amounts awarded by the Tribunal towards loss of earning capacity, loss of amenities, pain and sufferings, extra nourishment, transportation and attendant charges are highly excessive. Therefore, the claimant is not entitled to any enhancement and prayed for allowing C.M.A.No.2092 of 2017 and dismissal of C.M.A.No.2865 of 2015.

12.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

13.It is the contention of the claimant that he was aged 37 years at the time of accident and was a Driver earning a sum of Rs.15,000/- per month. The claimant failed to substantiate the said contention. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.10,000/- per month as notional income of the claimant. The accident occurred in the year 2012 and the monthly income fixed by the Tribunal is not meagre. The claimant sustained multiple injuries and fracture in right femur and right thigh and a surgery was conducted and plates and screws were fixed. P.W.2/Doctor certified that the claimant sustained 48% permanent disability and also deposed that he could not continue his job as he was doing earlier. The Tribunal considering the evidence of P.W.2/Doctor and nature of injuries sustained by the claimant, has awarded a sum of Rs.8,64,000/- towards loss of earning capacity by adopting multiplier method. Considering the nature of avocation, injuries and percentage of disability, the multiplier adopted by the Tribunal is proper. The Tribunal considering the entire materials on record, has awarded a total sum of Rs.10,29,400/- as compensation to the claimant, which is just and reasonable and hence, the same is not interfered with.

14.The amount of Rs.10,29,400/- awarded by the Tribunal as compensation to the claimant, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount 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 common judgment to the credit of M.C.O.P.No.1138 of 2013 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal, at the first instance and then recover the same from the 1st respondent. On such deposit, the claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

15.In the result, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Judge,
Motor Accidents Claims Tribunal,
Namakkal.

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

+1 CC to Mr.S.Arunkumar, Advocate sr 7816.
+1 CC to Mr.Ma.P.Thangavel, Advocate sr 7834.

C.M.A.Nos.2865 of 2015 and 2092 of 2017

RLD(CO)
SP(18/09/2020)