IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.208 and 292 of 2020
and C.M.P.No.2040 of 2020

C.M.A.No.208 of 2020

K.V.Selvarasu .. Appellant/Petitioner

Vs.

1.Venkatesan
(1st Respondent set exparte in Trial Court)
2.The New India Assurance Co. Ltd.
Motor Claims Third Party Cell
No.45, Moore street
5th floor, Chennai-600 001. .. Respondents/Respondents

C.M.A.No.292 of 2020

The New India Assurance Co. Ltd.
Motor Claims Third Party Cell
No.45, Moore street
5th floor, Chennai-600 001. .. Appellant/2nd Respondent

Vs.

1.K.V.Selvarasu ...1st Respondent/Petitioner

2.Venkatesan ..2nd Respondent/1st Respondent

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.09.2019 made in M.C.O.P.No.2365 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

In C.M.A.No.208 of 2020

For Appellants : Mr.K.V.Muthu Visakan

For R2 : Mr.S.Dhakshnamoorthy

Page numbers

In C.M.A.No.292 of 2020

For Appellants : Mr.S.Dhakshnamoorthy

For R1 : Mr.K.V.Muthu Visakan

(For caveator)

COMMON JUDGMENT

C.M.A.No.208 of 2020 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 06.09.2019 made in M.C.O.P.No.2365 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

C.M.A.No.292 of 2020 is filed by the Insurance Company challenging the award dated 06.09.2019 made in M.C.O.P.No.2365 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the claim petition in M.C.O.P.No.2365 of 2014 on the file of Motor Accident Claims Tribunal, Small Causes Court No.IV, Chennai. He filed the said claim petition claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.01.2014.

4.According to the claimant, on the date of accident, i.e., on 22.01.2014 at 16.30 hours, while he was riding in his motorcycle at the junction of Seethammal colony, 3rd street, TTK salai, Alwarpet, when turned right side, a car hit his motorcycle. Due to the said impact, the claimant fell down and at that time, when he tried to get up, the mini lorry belonging to the 1st respondent, which came from left side, driven by its driver in a rash and negligent manner, dashed against the claimant and caused the accident. Due to the accident, the claimant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the respondents.

5.The 1st respondent, owner of the mini lorry, remained exparte before the Tribunal.

6.The 2nd respondent / Insurance Company filed counter statement denying the averments made by the claimant and contended that the claimant lodged the complaint after the delay of 25 days. The alleged accident said to have been occurred on 22.01.2014. But the complaint was given only on 16.02.2014. The 1st respondent, owner of the mini lorry, did not report the alleged accident to the 2nd respondent. The accident has occurred only due to rash and negligent driving by the driver of the car. Therefore, the claim petition is bad for non-joinder of owner and insurer of the car and the 2nd respondent/Insurance Company is not liable to pay any compensation. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1, the Doctor was examined as P.W.2 and one Sambath was examined as P.W.3 and marked eleven documents as Exs.P1 to P11. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence. The certificate issued by the Medical Board was marked as Ex.C1.

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 mini lorry belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said mini lorry to pay a sum of Rs.3,92,000/- as compensation to the claimant.

9.Against the said award dated 06.09.2019 made in M.C.O.P.No.2365 of 2014, the 2nd respondent/Insurance Company has come out with C.M.A.No.292 of 2020. Not being satisfied with the amounts awarded by the Tribunal, the claimants have come out with C.M.A.No.208 of 2020 seeking enhancement of compensation.

10.The learned counsel appearing for the claimant contended that when the car hit against the motorcycle driven by the claimant, he fell down, but did not sustain injuries. When the claimant tried to get up, the mini lorry belonging to the 1st respondent insured with the 2nd respondent ran over him, his left leg was crushed and sustained grievous injuries on his left leg. The claimant suffered crush injury only due to rash and negligent driving by the driver of the mini lorry belonging to the 1st respondent. The learned counsel further contended that the claimant has taken treatment as in-patient in Life Med hospital, Gopalapuram, Chennai, on three spells from 22.01.2014 to 30.01.2014, 12.02.2014 to 13.02.2014 and 05.03.2014 to 09.03.2014 and underwent surgery. The claimant requires further medical treatment and to substantiate his claim, marked documents through P.W.2/Doctor, who treated the claimant. The claimant was a consultant in Sales Tax and was earning a sum of Rs.30,000/- per month. Due to the injuries, the claimant could not do the work for one year. The Tribunal without considering the same, fixed only a meagre sum of Rs.10,000/- as monthly income of the claimant and awarded only a sum of Rs.30,000/- towards loss of income for three months. The claimant claimed a sum of Rs.1,50,000/- towards future medical expenses by marking Ex.P10/estimation for future surgery. The Tribunal without considering the same awarded only a sum of Rs.1,00,000/- towards future medical expenses. The Tribunal ought to have adopted multiplier method and awarded atleast a sum of Rs.1,00,000/- towards loss of earning capacity. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of C.M.A.No.292 of 2020 filed by the 2nd respondent/Insurance Company.

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the insured vehicle. Even according to the claimant, when he tried to cross the road at intersection across TTK road, a car hit him and he fell down on the road. The driver of the insured vehicle coming in the proper direction would not have expected the sudden fall of the claimant. The accident has occurred only due to rash and negligent driving by the driver of the car and because the claimant could not identify the car, he has filed the claim petition against the owner of the insured car and the 2nd respondent/Insurance Company. The claimant has not suffered any bone fracture and for the injuries sustained, wound debridement alone has been done, as per the discharge summary issued for the period from 22.01.2014 to 30.01.2014. The Tribunal erred in awarding future medical expenses merely relying on the letter given by the hospital. In the Accident Register issued by the very same hospital, it is stated that the claimant has sustained only simple injuries. The claimant exaggerated the simple injuries and deliberately did not produce the Accident Register. In any event, the compensation awarded by the Tribunal is excessive and prayed for allowing C.M.A.No.292 of 2020 filed by the 2nd respondent/Insurance Company and dismissal of C.M.A.No.208 of 2020 filed by the claimant.

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

13.It is the contention of the claimant that after being hit by a car, while he was trying to get up, the mini lorry belonging to the 1st respondent insured with the 2nd respondent, which was driven by its driver in a rash and negligent manner, ran over his left foot. The claimant sustained grievous injuries and other multiple injuries. According to the claimant, he suffered injury only due to rash and negligent driving by the driver of the mini lorry. To substantiate this contention, the claimant examined himself as P.W.1 and deposed to that effect. F.I.R. was also lodged against the driver of the mini lorry. The 2nd respondent has not examined the driver of the mini lorry to substantiate their contention that the claimant suffered injuries only when the car hit the motorcycle driven by the claimant. The Tribunal considering the above materials, concluded that the claimant sustained injuries only due to rash and negligent driving by the driver of the mini lorry and fastened liability on the 2nd respondent/Insurance Company.

14.The further contention of the learned counsel appearing for the 2nd respondent/Insurance Company is that F.I.R. was lodged only 25 days after the accident. The claimant in F.I.R. itself has stated that immediately, after the accident occurred on 22.01.2014, he was admitted in Life Med hospital, Chennai and discharged on 31.01.2014. On 22.01.2014, he underwent surgery and discharged on 13.02.2014. He lodged the complaint on 16.02.2014. He has given reason for the delay in lodging F.I.R. It is well settled that the delay in lodging F.I.R. is not fatal to the claim of the claimant. In view of the above, there is no error in the award of the Tribunal fixing negligence on the part of the mini lorry and liability on the 2nd respondent/Insurance Company.

15.As far as quantum of compensation is concerned, the claimant examined P.W.2/Doctor, who treated him. The Tribunal referred the claimant to the Medical Board. The Medical Board after examining the claimant gave a report/Ex.C1 that the claimant suffered 10% disability. The Tribunal accepted the disability assessed by the Medical Board and the same is not interfered with. The claimant has not proved that he suffered functional disability. Therefore, the contention of the learned counsel appearing for the claimant that the Tribunal ought to have adopted multiplier method to award compensation, is without merits. The Tribunal awarded a sum of Rs.3,000/- per percentage of disability, which is meagre. This Court by judgment dated 09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another), held that taking into consideration the raise in cost of living, it will be reasonable to award a sum of Rs.4,000/- per percentage of disability for the accident of the year 2014 & 2015. In the present case, the accident is of the year 2014 and hence, a sum of Rs.4,000/- is granted per percentage of disability. Thus, a sum of Rs.40,000/- (Rs.4,000/- x 10%) is awarded towards disability. According to the claimant, he was a consultant in Sales Tax and was earning a sum of Rs.30,000/- per month. He failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the claimant, the Tribunal fixed a sum of Rs.10,000/- as monthly income of the claimant. The accident is of the year 2014 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.12,000/- is fixed as monthly income of the claimant. Due to the injuries, he would not have attended his work atleast for six months. Thus, a sum of Rs.72,000/- (Rs.12,000/- X 6) is awarded towards loss of income for six months.

16.According to the claimant, he has taken treatment as in-patient in Life Med hospital, Gopalapuram, Chennai, on three spells, from 22.01.2014 to 30.01.2014, 12.02.2014 to 13.02.2014 and 05.03.2014 to 09.03.2014 and underwent surgery. The compensation awarded by the Tribunal towards pain & suffering, extra nourishment, damage to clothes, attendant charges and loss of amenities are meagre. Considering the nature of injuries and period of treatment taken by the claimant, a sum of Rs.40,000/-, Rs.25,000/-, Rs.2,000/-, Rs.20,000/- and Rs.30,000/- are awarded towards pain & suffering, extra nourishment, damage to clothes, attendant charges and loss of amenities respectively. The claimant has contended that he has to undergo further surgery. P.W.2/Doctor who treated the claimant, has deposed to that effect. The claimant has produced Exs.P10/estimation for surgery & P11/medical advice certificate through P.W.2/Doctor and claimed a sum of Rs.1,50,000/-. The 2nd respondent/Insurance Company has not let in any contra evidence to the evidence of P.W.2/Doctor. The Tribunal considering the period of treatment taken by the claimant, held that a sum of Rs.1,50,000/- claimed by the claimant towards future medical expenses is excessive and reduced the same to Rs.1,00,000/-. When P.W.2/Doctor, who treated the claimant, produced a document stating that the claimant requires future medical treatment, which will cost Rs.1,50,000/-, the Tribunal without there being any contra evidence let in by the 2nd respondent/Insurance Company, erroneously reduced the same to Rs.1,00,000/-. Therefore, the claimant is entitled to a sum of Rs.1,50,000/- towards future medical expenses. The amounts awarded by the Tribunal under all the other heads are just and reasonable and hence, the same are hereby confirmed.

17.It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation, more than the amount claimed by the claimants. 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 or reduced
1.	Disability	30,000	40,000	Enhanced
2.	Medical expenses	1,59,575	1,59,575	Confirmed
3.	Future medical expenses	1,00,000	1,50,000	Enhanced
4.	Loss of income	30,000	72,000	Enhanced
5.	Pain and suffering	25,000	40,000	Enhanced
6.	Transportation	10,000	10,000	Confirmed
7.	Extra nourishment	10,000	25,000	Enhanced
8.	Damage to clothes	1,000	2,000	Enhanced
9.	Loss of amenities	20,000	30,000	Enhanced
10.	Attendant charges	6,400	20,000	Enhanced
	Total	3,91,975 rounded off to 3,92,000	5,48,575 rounded off to 5,49,000	Enhanced by Rs.1,57,000/-

18.In the result, C.M.A.No.208 of 2020 filed by the claimant is allowed and C.M.A.No.292 of 2020 filed by the

Insurance Company is dismissed. The compensation awarded by the Tribunal at Rs.3,92,000/- is hereby enhanced to Rs.5,49,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/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 appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//
Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
IV Judge
Small Causes Court, Chennai.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Mr.K.V.Muthuvisakan, Advocate SR.9185
+1cc to Mr.S.Dhakshnamoorthy, Advocate SR.9100

C.M.A.Nos.208 and 292 of 2020

VG-II(CO)
CB(05/01/2021)

Page numbers