

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 1086 & 1694 of 2017
and C.M.P. No. 9092 of 2017

C.M.A.No. 1086 of 2017

Thangaraj ... Appellant/petitioner

Vs.

1.R. Dinesh Kumar
(R1 remained exparte before the Tribunal.
Hence, notice dispensed with.)

2.The United India Insurance Co. Ltd.,
No.74-A, Salai Road,
Trichy District. ... Respondents/Respondents

C.M.A.No. 1694 of 2017

The United India Insurance Co. Ltd.,
No.74-A, Salai Road,
Trichy District. ... Appellant/
II Respondent

Vs.

1.Thangaraj ...Ist Respondent/Petitioner

2.R. Dineshkumar ...IInd Respondents/
Ist Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 20.03.2015, made in M.C.O.P. No. 73 of 2014, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Namakkal.

(In C.M.A.No. 1086 /2017)

For Appellant : Mr. Ma.P. Thangavel

For Respondents : Ms. I. Malar (For R2)

(In C.M.A.No. 1694 /2017)

For Appellant : Ms. I. Malar

For Respondents : Mr. Ma.P. Thangavel (For R1)

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

C.M.A. No. 1086 of 2017 is filed for enhancement of the compensation and C.M.A. No. 1694 of 2017 is filed against the award dated 20.03.2015, made in M.C.O.P. No. 73 of 2014, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Namakkal.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition for the sake of convenience.

4.The claimant filed the said claim petition claiming a sum of Rs.15,00,000/- (amended vide order of the Court dated 04.01.2017 made in M.P. No. 1 of 2015 in C.M.A. SR. 94295 of 2015) as compensation for the injuries sustained by him in the accident that took place on 12.11.2013.

5.According to the claimant, on the date of accident viz., 12.11.2013, when he was standing near Varadaraj Malligai Shop, Akkiyampatti Bus stop on the road of Sendamangalam to Namakkal Main Road, rider of the Motorcycle bearing Registration No. TN-48-W-0694, belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the claimant and caused the accident. The claimant sustained grievous injuries and was admitted in M.M. Hospital, Namakkal. The accident occurred due to rash and negligent driving by the rider of the Motorcycle belonging to the 1st respondent and filed the claim petition, claiming compensation against the 1st respondent as owner and 2nd respondent as insurer of the offending vehicle.

6.The 1st respondent remained exparte before the Tribunal.

7.The 2nd respondent-Insurance Company filed counter statement and denied all the averments of the claimant in the claim petition. According to the 2nd respondent, the claimant crossed the road from one side to another and invited the accident. Even though the rider of the Motorcycle belonging to the 1st respondent drove the Motorcycle carefully obeying traffic rules, he could not avoid the accident. The accident has occurred only due to negligence on the part of the claimant. Further, the rider of the Motorcycle did not possess valid driving license to ply the vehicle and there is no valid RC at the time of accident for the vehicle. The 2nd respondent also denied the insurance policy of the vehicle. The Sendamangalam Police has filed the FIR erroneously on the rider of the Motorcycle, without investigating the matter properly and prayed for dismissal of the claim petition.

8.Before the Tribunal, the claimant examined himself as P.W.1 and examine one Doctor as P.W.2 and marked 13 documents as Exs.P1 to P13. The respondents did not let in any oral and documentary evidence.

9.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the driver of the Motorcycle belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.12,76,466/- as compensation to the claimant.

10.Against the said award dated 20.03.2015, made in M.C.O.P. No. 73 of 2014, the 2nd respondent-Insurance Company filed C.M.A. No. 1694 of 2017 and not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A. No. 1086 of 2017 for enhancement of compensation.

11.Learned counsel appearing for the 2nd respondent-Insurance Company contended that the claimant suddenly crossed the road and due to his negligence, the accident has occurred. The Tribunal erroneously fixed negligence on the part of the rider of the Motorcycle belonging to the 1st respondent. The claimant failed to prove the nature of work done by him and income received. In the absence of any material evidence, the Tribunal erred in fixing the monthly income at Rs.6,500/- per month. P.W.2 - Doctor certified that the claimant suffered 59.5% disability. The Tribunal on erroneous reason, fixed 100% disability and applied multiplier method and granted compensation. The compensation granted by the Tribunal for pain and suffering and attendant charges are excessive and prayed for

setting aside the award of the Tribunal and allowing C.M.A. No. 1694 of 2017.

12.Per contra, learned counsel appearing for the claimant contended that the accident has occurred only due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent. The claimant examined himself as P.W.1 and marked the FIR, which was registered against the rider of the Motorcycle, as Ex.P1. The respondents did not let in any contra evidence to disprove the same. The Tribunal has rightly fixed the negligence on the part of the rider of the Motorcycle.

12(a) As far as the quantum of compensation is concerned, the claimant has suffered fracture in his leg and surgery was conducted. P.W.2 - Doctor assessed the percentage of disability suffered by the claimant as 59.5% and deposed that the claimant has to live with some assistance for his entire life time. In view of the same, the Tribunal has rightly fixed the disability at 100% and granted compensation by adopting multiplier method. The claimant spent a sum of Rs.1,77,466/- towards medical expenses and hence, the Tribunal ought to have granted compensation for medical expenses. The Tribunal ought to have granted Rs.1,00,000/- separately for the disability. The amounts granted by the Tribunal is meagre and prayed for dismissal of the appeal filed by the 2nd respondent-Insurance Company and for enhancement of the compensation.

13.Heard learned counsel appearing for the claimant as well as the 2nd respondent and perused the materials available on record.

14.From the materials on record, it is seen that it is the contention of the claimant that while he was standing near Varadaraj Malligai Shop, Akkiyampatti Bus stop on the road of Sendamangalam to Namakkal Main Road, rider of the Motorcycle belonging to the 1st respondent drove the same in a rash and negligent manner and dashed against the claimant. On the other hand, it is the contention of the 2nd respondent-Insurance Company that the claimant suddenly crossed the road and due to negligence on the part of the claimant, the accident has occurred. The claimant examined himself as P.W.1 and marked FIR which was registered against the rider of the Motorcycle belonging to the 1st respondent. The 2nd respondent-Insurance Company did not examine the rider of the Motorcycle or any independent witness and did not let in any evidence to substantiate their claim. The Tribunal considering the evidence

on record with regard to negligence, has rightly held that the accident has occurred only due to rash and negligent riding by the rider of the Motorcycle belonging to the 1st respondent. There is no error in the said award warranting interference by this Court.

15.As far as the quantum of compensation is concerned, the claimant examined P.W.2- Doctor who deposed the nature of injuries suffered by the claimant, treatment taken and certified that the claimant suffered 59.5% disability. The claimant in the claim petition has stated that he was working in Sago Factory and was earning a sum of Rs.8,000/- per month. The claimant has not stated the nature of work done by him. The Tribunal relying on the judgment of this Court reported in 2014 (2) TN MAC 420 [R. Murali Vs. R. Shyamala and another], fixed the disability of the claimant at 100% and granted compensation towards loss of future earning, by adopting the multiplier method. In the judgment referred to above, the claimant was Driver and he suffered fracture and he did not renew his driving licence due to the injuries. Considering the said fact, this Court fixed 100% disability, when the Doctor certified only 60% disability to the claimant in that case. The facts of the case in the judgment referred to above are different, as in the present case, the claimant has not stated the nature of work done by him and he suffered functional disability and could not do the work as he was doing earlier. For the above reason, the award of the Tribunal fixing 100% disability and awarding compensation by adopting multiplier method towards loss of future earning capacity is set aside. The claimant is entitled to compensation only by percentage method for 59.5%, rounding off to 60%, at the rate of Rs.3,000/- per percentage of disability. Hence, a sum of Rs.1,80,000/- (Rs.3,000/- x 60%) is awarded towards disability. The claimant has not let in any evidence to show that he require future medical treatment. Hence, he is not entitled for any compensation towards future medical expenses. The claimant claimed that he was working in Sago Factory and was earning a sum of Rs.8,000/- per month. He has failed to prove the same. In the absence of any material evidence to prove the avocation and income, the Tribunal fixed a sum of Rs.6,500/- per month as the notional income of the claimant. The accident is of the year 2013 and the monthly income fixed by the Tribunal is meagre. Hence, as claimed by the claimant, a sum of Rs.8,000/- per month is fixed as the notional income of the claimant. The Tribunal has not awarded any amount towards loss of income. Due to the injuries suffered in the accident, the claimant would not have worked atleast for a period of six months. Hence, a sum of Rs.48,000/- (Rs.8,000/- x

6 months) is awarded towards loss of income. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same 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 future earning capacity	10,14,000/-	-	Set aside
2.	Medical expenses	1,77,466/-	1,77,466/-	Confirmed
3.	Transportation	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Pain and suffering	25,000/-	25,000/-	Confirmed
6.	Attendant charges	50,000/-	50,000/-	Confirmed
7.	Loss of income	-	48,000/-	Granted
8.	Disability	-	1,80,000/-	Granted
	Total	12,76,466/-	4,90,466/-	Reduced by Rs.7,86,000/-

16. In the result, both the appeals are partly allowed and the amount awarded by the Tribunal at Rs.12,76,466/- is modified to Rs.4,90,466/- along with interest and costs. The 2nd respondent-Insurance Company is directed to deposit the modified 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, to the credit of M.C.O.P. No. 73 of 2014. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs. The

2nd respondent-Insurance Company is permitted to withdraw excess amount, if any, lying in the credit of M.C.O.P. No. 73 of 2014, if the entire award amount has already been deposited by them. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar(CCC)

True Copy
Sub-Assistant Registrar

gsa

To
1.The Additional District Judge,
(Motor Accident Claims Tribunal),
Namakkal.

Copy to
The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Malar Advocate sr17084
+1 cc to Mr.Thangavelu Advocate sr18056

C.M.A. Nos. 1086 & 1694 of 2017

mg(co)
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