IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 01.04.2021	Date of Pronouncing Judgment 17.06.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1225 of 2015
and
Cros. Obj. No.100 of 2015

The Branch Manager,
National Insurance Company Ltd.,
37, SN High Road, Tirunelveli.
.. Appellant in Appeal /
1st respondent in Cross Objection

Vs.

1.S.R.Ramasamy .. 1st Respondent in Appeal /
Cross Objector

2.S.Balakrishnan
3.Y.Ebanazer Ammal .. Respondents in Appeal /
Respondents 2 and 3 in
Cross Objection

Prayer in CMA.No.1225 of 2015: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 25.04.2014 made in MCOP.No.125 of 2013 on the file of the Motor Accidents Claims Tribunal (Sub Court), Gobichettipalayam.

Prayer in Cros.Obj.No.100 of 2015: Cross Objection filed under Order 41 Rule 22 of CPC, whereas the first respondent herein has preferred an appeal in C.M.A.No.1225 of 2015 before this Court against the decree and judgment in M.C.O.P.No.125 of 2013 dated 25.04.2014 on the file of MACT / Sub Court, Gobichettipalayam.

For Appellant : Mr. D. Bhaskaran
in CMA/1st Respondent in
Cross objection

For Respondents : Mr. Ma.P.Thangavel, for R1
in CMA/Cross objector in
Cross objection
No Appearance for R2 & R3

JUDGMENT

The Insurance Company is the appellant herein. The appellant /Insurance Company has filed the above CMA challenging the award passed by the Tribunal in MCOP.No.125 of 2013 on the point of contributory negligence fixed upon the owner of the car insured with the appellant Insurance Company at 50% and also quantum of compensation.

2. The main contention of the appellant/Insurance Company is that the claimant/petitioner is a tort feasor and when the FIR and charge sheet has been filed against the claimant, the trial Court ought not to have been granted contributory negligence at the rate of 50% and erred in fixing so. Further, he submitted that the Tribunal has awarded a sum of Rs.1,37,500/- as compensation under the head of permanent disability and a sum of Rs.3,00,000/- has been awarded under the head of loss of earning power.

3. Per contra, the learned counsel for the first respondent herein/claimant has filed a cross objection under Order 41 Rule 22 of CPC in Cros.Obj.No.100 of 2015, seeking enhancement of compensation awarded by the tribunal on the ground that after deposition of evidence, he was continuously under treatment for the injuries sustained in the accident. In support thereto, he has also filed a petition in CMP.No.13080 of 2020 to receive additional document mentioned in the list of documents and to be marked as Ex.P18/Medical Bills series & Ex.P19/Medical Prescription series.

4. According to the learned counsel for the respondent, the trial Court ought not to have been fixed 50% contributory negligence on the part of the claimant and the learned Judge has concluded that the evidence does not support the case of the insurance but supported the case of the claimant.

5. The learned counsel for the claimant would draw my attention to the evidence of PW.2 and PW.4 before the learned Judicial Magistrate in the trial or the Criminal Case in STC.No.1989 of 2011. Furthermore, he also contended that in view of the injuries sustained in the accident, he could not do work as before and hence, further prospects also to be included and also relied upon the judgment of the Hon'ble Supreme Court reported in 2020-SCC Online SC 752 [Pappu Deo Yadav Vs. Naresh Kumar & others]

6. After hearing both the counsels, lower Court records are called for and the claimant has also filed Cross Appeal No.100/2015 along with CMP.No.13080/2020 to receive additional

documents Exs.P.18/Medical Bills Series and P.19/Medical Prescription Series. The above CMP was filed under Order 41 Rule 27 to receive additional documents at the appellate stage. After perusing the originals filed along with the affidavit, it appears that a sum of Rs.14,115/- was incurred by the claim petitioner after disposal of the order and some of the documents pertaining to previous year 2014 and 2015 to the extent of Rs.7,045/- and another set of bill during 2017 said to be the follow up to the tune of Rs.8,727/-. Accordingly, claimed a sum of Rs.29,887/- by way of cross appeal.

7. After perusing those documents, I find that those medical bills are duly supported by the medical prescriptions in respect of the injuries sustained by the claim petitioner in the very same accident and accordingly, those documents are ordered to be received in CMP.No.13080 of 2020 is allowed and they are marked as Exs.P.18 series and P.19 series.

8. The Tribunal has rightly held that the accident has occurred due to the rash and negligent driving of the driver of the car in connection thereto exhibits were marked as Exs.P1 and P2, judgment given by the Judicial Magistrate and on the side of the respondent, Ex.R1 charge sheet has been filed and driver of the offending vehicle is examined as RW.1. Based upon the evidence of PW.1 and the answer elicited from the cross examination of PW.2, I find that the tribunal has rightly appreciated the oral evidence of P.W.1 and P.W.2 coupled with the documentary evidence of Exs.P1 and P2 and rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the car. Based upon the evidence of R.W.1, the trial Court has rightly appreciated the evidence of R.W.1 coupled with the evidence of P.W.1 and documentary evidence of Exs.R1 and R2 had categorically gave a finding that both driver of the car as well as the petitioner (injured petitioner PW.1) have contributed at the ratio of 50:50.

9. After summoning the original records from the trial Court and also perusing the rough sketch marked before the Magistrate Court, I am unable to affix the seal of approval to the contention of the appellant-Insurance Company for the reason that the acquittal in the criminal Court will not absolve liability of the Insurance Company since the standard of the proof required before the Criminal Court and that of the Motor Accident Claims Tribunal are on the different footing. It is a specific evidence of P.W.1 about the manner of the accident which is duly corroborated in the Ex.P1/FIR.

10. Taking note of the entirety of the circumstances, I find that the Tribunal has rightly come to the conclusion that the accident had taken place due to the rash and negligent of the driver of both the vehicles namely P.W.1 and R.W.1 accordingly fixed the responsibility and liability at 50% each. Hence, this Court negatived the contention of the appellant/ Insurance Company regarding the contributory negligence.

11. The next point for consideration is whether, the compensation awarded by the trial Court is excessive? As stated supra, a sum of Rs.29,887/- has been claimed as enhancement of compensation by way of cross objection and necessary documents has been filed in the above said CMP, which was allowed for the reasons stated supra.

12. After perusing the various heads of the compensation and also taking note of the fact that the Tribunal has calculated the compensation, based upon the decision rendered by this Court at the relevant point of time and separately awarded compensation for permanent disability and loss of earning as a two separate heads. Hence, the contention raised by the claim petitioner-cross objector for enhancement that he is entitled for permanent disability is negatived as per the reasons infra.

13. Taking note of the entirety of the circumstances that the tribunal has awarded a sum of Rs.1,37,500/- towards permanent disability in a separate heading and Rs.3 lakhs towards loss of earning as a separate heading.

14. In view of the decision prevailing at the relevant point of time, a sum of Rs.4,37,500/- is awarded besides medical expenses and hence I find that even by applying multiplier method, the amount so arrived in and around a same amount. Furthermore, on the point of percentage of disability, the Tribunal has rightly assessed the wound certificate issued by the competent Doctor coupled with Exs.P4 and P5 discharge summary and Ex.P11 and taking note of the oral evidence of Medical Doctor who had given treatment namely PW.3 has rightly fixed the disability as permanent and also fixed the disability at 55% and also awarded a sum of Rs.2,500/- per percentage in a separate heading and awarded Rs.1,37,500/. Hence, taking into the total amount awarded for the disability namely Rs.1,37,500/- and Rs.3 lakhs, I find that it is just and reasonable award. In respect of medical expenses a sum of Rs.6,29,390/- was awarded. However, a sum of Rs.29,887/- appears to have been left out and the same is hereby awarded to the claim petitioner by way of enhancement.

15.Transportation:

The tribunal has awarded a sum of Rs.5,000/- towards Transportation. The said sum is enhanced to Rs.10,000/-.

16.Extra Nourishment:

The tribunal has awarded a sum of Rs.10,000/- towards Extra Nourishment and the same is confirmed.

17.Pain and sufferings:

The tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings and the same is confirmed.

18.Attendant Charges:

No amount has been awarded towards attendant charges by the Tribunal and therefore, a sum of Rs.10,000/- is awarded towards attendant charges.

19.Loss of Amenities:

No amount has been awarded towards loss of amenities by the Tribunal and therefore, a sum of Rs.10,000/- is awarded towards loss of amenities.

20. Hence, the total compensation payable in this case calculated as follows:-

Head	Amount (Rs.)
Permanent Disability	1,37,500/-
Loss of Earning	3,00,000/-
Transportation	10,000/-
Extra Nourishment	10,000/-
Medical Expenses	6,29,390/-
Medical bills and Prescriptions	29,887/-
Pain and Sufferings	30,000/-
Attendant Charges	10,000/-
Loss of Amenities	10,000/-
Total	11,66,777/-
50% of the total award amount	5,83,389/-

21. Accordingly, the modified compensation of Rs.5,83,389/- is to be paid to the 1st respondent along with the interest from the date of accident. The appellant / National Insurance Company Limited is directed to deposit the modified award amount of 50% of Rs.11,66,777/- = Rs.5,83,389/- along with the interest, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the 1st respondent/claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS.

22. Accordingly, the CMA filed by the Insurance Company is dismissed and Cross Objection filed by the claim petitioner is partly allowed to the limited extent of the enhancement as awarded above. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AT

To
1. The Motor Accident Claims Tribunal,
   (Sub Court), Gobichettipalayam.

2. The Section Officer,
   VR Section,
   High Court,
   Chennai – 600 104.

+1CC to Mr.Ma.P.Thangavel, Advocate, Sr.No.28309

Order in
C.M.A.No.1225 of 2015 and
Cros. Obj. No.100 of 2015

SJ (CO)
K.RK. (18.11.2021)