IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2021

PRONOUNCED ON : 21.09.2021

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A. No.937 of 2020
and
C.M.A.No.15 of 2021 & C.M.P.No.121 of 2021

CMA.No.937 of 2020:

Shanmugasamy ...Appellant/Claimant

Versus

1. P.Rajasegaran

2. Reliance General Insurance Co.Ltd.,
   No.6, 6th floor, Reliance House,
   Haddows Road, Chennai - 600 006. ...Respondents/Respondents

CMA.No.15 of 2021:

The Branch Manager,
Reliance General Ins.Co.Ltd,
No.6,6th floor, Reliance House, Haddows Road,
Chennai - 600 006. ...Appellant/2nd Respondent

Versus

1.Shanmugasamy 1st Respondent/Claimant

2.P. Rajasegaran ...2nd Respondent/1st Respondent

Common Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 30.09.2019 made in M.C.O.P.No. 2070 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes at Chennai.

CMA.No.937 of 2020:

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Ms.C.Bhuvanasundari (for R2)

CMA.No.15 of 2021:

For Appellant : Ms.C.Bhuvanasundari

For Respondents: Mr.A.N.Viswanatha Rao (for R1)

COMMON JUDGMENT

Challenging the Judgment and decree dated 30.09.2019 passed in M.C.O.P.No.2070 of 2017 on the file of the Motor Accident Claims Tribunal/ Court of Small Causes, Chennai, awarding a sum of Rs.15,27,300/- as compensation for the injuries sustained by the claimant in the accident that took place on 25.03.2017, the present appeals have been filed before this Court.

2.Questioning the quantum of compensation awarded by the Tribunal as onerous, the Insurance Company has filed C.M.A.No.15 of 2021. As against the very same award dated 30.09.2019, the claimant has filed C.M.A.No.937 of 2020 seeking enhancement of compensation.

3.As the appeals arise out of one and the same award, they are taken up for hearing together and are disposed of by this common Judgment.

4.For the sake of convenience, the parties to these appeals are referred to as Claimant and Insurance Company in these appeals.

5.The brief facts of case of the claimant before the Tribunal is as follows:-

On 25.03.2017 at about 14.20 hours, when the claimant was crossing the E.C. Road opposite to Alrif Hotel, a motorcycle bearing Registration No.TN-07-BX-6295, which was driven by the first respondent and insured with the second respondent/Insurance company, came from the opposite direction in the same road in a rash and negligent manner and hit the claimant. In the impact, the claimant sustained grievous injuries as set out in column No.11 of the claim petition. For the injuries so sustained, the claimant has filed the claim petition seeking compensation of Rs.25,00,000/-.

6.The Insurance company has filed a counter to the claim petition by denying the averments made by the claimant with respect to his age, occupation, income and the manner in which the accident said to have occurred. Further it is stated by the Insurance Company that the claimant is the tort-feasor, who has suddenly darted across the road without noticing the two wheeler. Hence, the Insurance Company prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as PW.1 and marked Ex's. P1 to P16. On the side of the respondents in the claim petition neither any witness was examined nor any document was marked. Besides, two Court exhibits of Ex.C1/Letter issued by the medical board and Ex.C2/Disability certificate issued by the medical board were marked.

8.Based upon the oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent driving of the first respondent/driver of the two wheeler. Taking note of the nature of injuries sustained by the claimant, the Tribunal had awarded a total sum of Rs.15,27,300/- as compensation. The break up details of the compensation amount awarded by the Tribunal are as follows:-

Description	Amount awarded by Tribunal
Disability	Rs.3,00,000/-
Pain and Suffering	Rs.1,50,000/-
Extra nourishment	Rs.50,000/-
Transport to Hospital	Rs.20,000/-
Damages to clothes	Rs.1,000/-
Attender charges	Rs.4,400/-
Medical expenses	Rs.9,31,848/-
Future Medical Expenses	Rs.25,000/-
Loss of Income	Rs.20,000/-
Loss of Amenities	Rs.25,000/-
Total	Rs.15,27,248/- (round off Rs.15,27,300/-)

9.The learned counsel for the Insurance Company/appellant in CMA.No.15 of 2021 would contend that the Tribunal has failed to hold an impartial inquiry into the claim as per Section 168 of the Motor Vehicles Act. If such enquiry is conducted, the contributory negligence of the claimant would have revealed. More so, the claimant is stated to be a guide of PhD student, but none of the student was examined to prove his income. It is also stated in the claim petition that he was earning Rs.50,000/- per month including pension, but, it was not proved by way of producing income tax or any relevant documents. The Tribunal, by adopting multiplier method for 50% of functional disability awarded enormous amount as compensation without any basis and it require interference by this Court.

10.On the contrary, the learned counsel for the claimant would contend that the claimant was 70 years at the time of accident and he is a retired professor and acting as a "guide to PhD students". However, after the accident, due to the injuries sustained, the claimant could not perform his regular work as before the accident and he is unable to continue his work. Due to the fractures and injuries sustained over the hip bone, thigh bone, Jaw bones, the claimant has been totally immobilized. The claimant was taking treatment at various hospitals from 25.03.2017 to 15.04.2017 in three spells. Taking note of the serious injuries sustained by the claimant, the Doctor has assessed the disability at 50%. The Tribunal ought to have treated the injuries sustained by the claimant as 100% and awarded compensation. The amount awarded under various heads are disproportionate to the nature of injuries sustained by the claimant. Therefore, he prayed for suitable enhancement of compensation.

11.I have heard both sides and perused the materials available on records. At the outset, it has to be mentioned that the Insurance Company has filed the appeal only for reduction of the compensation awarded by the Tribunal but they did not question their liability to pay compensation to the claimant.

12.It is seen from the records that the Tribunal referred the claimant to the Medical Board for assessing the disability. The Doctor, who issued the disability certificate/Ex.C2 assessed the disability of the claimant at 50%, which could be evident from Ex.P3 to P5/discharge summaries. It clearly shows that the claimant had taken 21 days of treatment as in-patient. During the course of treatment, the claimant also underwent surgeries on the right femur, mandilla and maxima, Acetabulum fractures. The claimant was aged 70 years at the time of accident and the pain and suffering he had underwent would be enormous considering his age. At the same time, when the medical board has assessed the disability of the claimant at 50%, the argument of the counsel for the claimant that the disability has to be treated as 100% or as a functional disability to award compensation cannot be sustained. There is no reason to disbelieve the assessment of disability by the competent Medical Board. There is also no reason to treat the disability of the claimant as functional disability taking note of the period of his treatment. As mentioned above, the claimant had taken treatment from 25.03.2017 to 15.04.2017. Taking note of the above, the Tribunal has awarded a just and fair compensation proportionate to the nature of injuries sustained by the claimant. The amount of Rs.15,27,300/- awarded by the Tribunal as compensation to the claimant is wholly justified. Therefore, the appeal filed by the claimant is liable only to be dismissed.

13.The main contention of the counsel for the appellant-Insurance Company is that the claimant is a tort-feasor, he has contributed for the accident inasmuch as he has suddenly darted across the road without noticing the on-coming two wheeler driven by the first respondent. This contention of the counsel for the appellant is not merit acceptance. First of all, there is no evidence let in to show the alleged negligence attributable on the part of the claimant. Secondly, even assuming that the claimant attempted to cross the road ignoring the two wheeler driven by the first respondent, it is the first respondent who has to exercise prudence and caution while driving the two wheeler. The fact that the first respondent, while driving the two wheeler, had hit the claimant, a pedestrian, and caused him injuries would only result in reaching an irresistible conclusion that it was the first respondent, who is the tort-feasor and responsible for the accident.

14.In the light of the above conclusion, the award and decree dated 30.09.2019 made in M.C.O.P.No.2070 of 2017 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes at Chennai is confirmed. Resultantly, both the Civil Miscellaneous Appeals are dismissed. No costs. The Insurance Company is directed to deposit the entire award amount as determined by the Tribunal with accrued interest, if not already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

klt

To

The Motor Accident Claims Tribunal,
II Court of Small Causes at Chennai.

Copy To

The Section Officer,
V.R. Section, High Court, Madras - 104.

C.M.A. No.937 of 2020
and
C.M.A.No.15 of 2021 & C.M.P.No.121 of 2021

BS(CO)
RGA(14/12/2021)