



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.718 of 2017
& C.M.P.No.3999 of 2017
& Cross Objection No.57 of 2019

C.M.A.No.718 of 2017

The Branch Manager,
Third Party ClaimsHub,
The Bajaj Allianz General Insurance
Company Limited, No.1, G.D.S.Complex,
Opposite to New Bus Stand,
Katpadi Road, Vellore.

...Appellant/2nd Respondent

Vs

1.K.R.Periasamy

...1st Respondent/Claimant

2.Santhoshima Hotels (P) Limited,
A.Dhanapal, Managing Director,
No.48, S.C.Road, Bangaluru,
Karnataka

...2nd Respondent/1st Respondent

Cros.Obj.No.57 of 2019

K.R.Periasamy

...Appellant/1st Respondent in CMA
and Claimant in MCOP

Vs

1.The Branch Manager,
Third Party ClaimsHub,
The Bajaj Allianz General Insurance
Company Limited,
No.1, G.D.S.Complex,
Opposite to New Bus Stand,
Katpadi Road, Vellore.

...1st Respondent/Appellant in CMA/
2nd Respondent in MCOP

2.Santhoshima Hotels (P) Limited,
A.Dhanapal, Managing Director,
No.48, S.C.Road, Bangaluru,
Karnataka.

... 2nd Respondents/2nd Respondent/
1st Respondent



Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the award and decree dated 16.11.2016 made in M.C.O.P.No.126 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur.

Prayer: Cross Objection filed under Order 41 Rule 22 of C.P.C., against the award and decree dated 16.11.2016 made in M.C.O.P.No.126 of 2013 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Tirupattur.

For Appellant
in C.M.A and Respondents
in Cross Objection : Mr.J.Michael visuvasam

For Respondents in C.M.A: No appearance
and appellant in Cro.Obj.

JUDGMENT

The Civil Miscellaneous Appeal is filed by the Insurance Company being aggrieved by the liability fixed on the Insurance Company as well as the quantum of compensation.

2. The short point canvassed by the learned counsel for the appellant is that the vehicle insured under them was not the offending vehicle involved in the alleged accident. The owner of the vehicle himself has informed to the Insurance Company that the vehicle was wrongly implicated and also filed detailed counter in the claim petition stating that on the alleged date of accident, the vehicle was parked in his house and the owner was out of station on pilgrimage. However, the Tribunal considering the criminal Court judgment, which has acquitted the driver based on the benefit of doubt and not on a specific fact that the alleged vehicle Toyota car was not involved in the accident.

3. The learned counsel for the appellant would submit that the claimant has not proved that the accident occurred while he was diligently riding his vehicle and the Toyota car bearing registration No.Ka-43-M-1666 was suddenly turned right side with high speed and hit the motorcycle.

4. On perusing the evidence, this Court finds that the first information regarding the accident was lodged by the injured within 10.00 hrs. His statement was recorded by the police, when the injured was in the hospital for treatment. Though the owner of the vehicle as well as the driver of the



Toyota car denied the involvement of the car and also the Judicial Magistrate has acquitted the driver, perusing Ex.R-3 does not positively indicate that the Toyota car was not the offending vehicle. Therefore, rash and negligent driving of the car driver found proved. Hence, the liability fixed on the Insurance Company to indemnify the car owner stands confirmed.

5. However, the quantum of compensation awarded to the claimant requires modification. The accident caused fracture of tibia, for which, the claimant had taken treatment for a day and advised a month rest. The claimant has produced medical bill for Rs.40,577/- and Transportation charges for Rs.9,200/-. The doctor, who clinically examined the claimant, has assessed the disability as 30%. However, the wound certificate and discharge summary indicate that in the accident, the claimant has suffered contusion of his right knee, for which, he has advised to take 30 days bed rest.

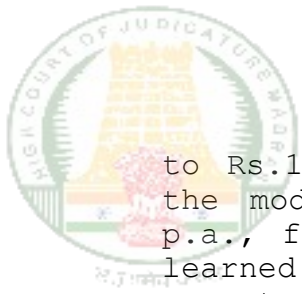
6. The Tribunal has awarded a sum of Rs.75,000/- for permanent disability fixing the percentage of the disability at 25%, which is excessive and disproportionate to the wound certificate. Hence, reduced and fixed at 10%.

7. The claimant herein has filed cross objection stating that the award passed by the Tribunal was very less and the Tribunal has not taken the loss of earning capacity during the treatment period. According to the claimant, in his cross examination, he was stated that he was drawing gross salary of Rs.35,343/- and due to medical advise, he was post availed medical leave for a month. If he had not met with the accident, he could have saved his medical leave. The reasoning given in the cross objection for enhancement is highly preposterous. However, the Tribunal ought to have award some compensation for the loss of income and for attenders charges.

8. On considering the appeal as well as the cross objection, the award passed by the Tribunal is modified as below:

Permanent Disability (10% x Rs.3,000/-)	: Rs.30,000/-
Pain and sufferings	: Rs.20,000/-
Transportation	: Rs.9,200/-
Medical expenses	: Rs.40,577/-
Extra nourishment	: Rs.5,000/-
Attender charges	: Rs.5,000/-
Total	Rs.1,09,777/-

9. In the result, the compensation of Rs.1,49,777/- awarded by the Tribunal to the claimant is modified and reduced



to Rs.1,09,777/-. The Insurance Company is directed to deposit the modified award amount with interest at the rate of 7.5% p.a., from the date of petition till the date of deposit. The learned counsel for the appellant states that the entire award amount with accrued interest has already been deposited. If so, the claimant is permitted to withdraw the modified awarded amount less the amount already withdrawn. The Insurance Company is permitted to withdraw the excess amount, if any on filing appropriate petition.

10. With the above modification and direction, the Civil Miscellaneous Appeal is partly allowed and the Cross Objection is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

rpl

To,

1.The Motor Accidents Claims Tribunal
(Special Subordinate Judge), Tirupattur.

Copy To

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.J.Michael visuvasam, Advocate SR.No.5951

C.M.A.No.718 of 2017
& C.M.P.No.3999 of 2017
& Cross Objection No.57 of 2019

RSV (CO)
GMY (24/09/2021)