IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.1659 of 2018 & 3430 of 2017
and
CMP.No.13079 of 2018

CMA.No.3430 of 2017:

Ranganathan ...Appellant

Vs.

1. Sakthikumar

2. Cholamandalam MS General Insurance Co. Ltd.,
Second Floor, Dare House,
Door No.2, N.S.C. Road,
Chennai – 600 001. ...Respondents

CMA.No.1659 of 2018:

M/s.Cholamandalam MS General Insurance Co. Ltd.,
“Dare House”, II Floor,
No.2, N.S.C. Bose Road,
Chennai. ...Appellant

Vs.

1. Ranganathan

2. Sakthi Kumar ...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 16.08.2017 in M.C.O.P.No.2362 of 2012 on the file of the Motor Accidents Claims Tribunal/Principal Sub-Judge at Cuddalore.

For Appellant	:	Mr.R.Muralidharan (in CMA.No.3430 of 2017) Mr.J.Micheal Visuvasam (in CMA.No.1659 of 2018)
For Respondents	:	No Appearance, (for R1 in CMA.No.3430 of 2017 & for R2 in CMA.No.1659 of 2018) Mr.J.Micheal Visuvasam, (for R2 in CMA.No.3430 of 2017) Mr.R.Muralidharan, (for R1 in CMA.No.1659 of 2018)

COMMON JUDGEMENT

Since both the appeals are arising out of the very same accident, they are disposed of by way of this common judgment.

2. Challenging the judgment and decree dated 16.08.2017 passed in M.C.O.P.No.2362 of 2012 on the file of the Motor Accidents Claims Tribunal/ Principal Sub-Judge at Cuddalore, both the insurer and the claimant are before this Court.

3. For brevity, the appellant in CMA.No.3430 of 2017 is hereinafter referred to as the claimant and the appellant in CMA.No.1659 of 2018 is hereinafter referred to as the insurer of the offending vehicle.

4. It is the case of the claimant that, on 29.05.2012 at about 6.15 hours, when the claimant was returning home in motor cycle bearing Regn.No.TN-31-AC-7124, an auto rickshaw bearing Regn.No.TN-31-AD-6572 owned by the 1st respondent in CMA.No.3430 of 2017, insured with the insurer, driver by its driver in a rash and negligent manner, without any prior indication suddenly turned towards its right and dashed the claimant, as a result of which, the claimant sustained grievous injuries. Thereby, the claimant filed a claim petition claiming compensation of Rs.20,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.7,11,350/-. Aggrieved with the said order, the claimant has come up with an appeal in CMA.No.3430 of 2017, seeking enhancement of the compensation fixed and the insurer of the offending vehicle has come up with an appeal in CMA.No.1659 of 2018, questioning the liability of the insurer.

5. Learned counsel appearing for the claimant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the auto rickshaw insured with the insurer, in which, the claimant sustained 70% permanent disability and the same is evident from the Disability certificate issued by the Regional Medical Board, pursuant to the direction of this Court. Further, the claimant being an agriculturist and Brick vendor by profession, due to the grievous fracture injuries sustained by him, is unable to continue his avocation, due to which, his earning capacity got reduced. While so, without considering the said fact, the tribunal, instead of adopting the multiplier method, had adopted the percentage method and awarded a compensation of Rs.1,80,000/- under the head Permanent disability, which cannot be acceded to. Even then, though the claimant sustained 70% disability, the tribunal had awarded compensation for 60% disability alone, which has to necessarily be enhanced. Further, though the claimant submitted Medical bills to the tune of Rs.5,92,048/-, however, the tribunal had awarded only a sum of Rs.2,07,750/-, which has to necessarily enhanced. Accordingly, he prayed for appropriate enhancement in favour of the claimant.

6. Per contra, the learned counsel appearing for the insurer of the offending vehicle submitted that, it is the claimant who drove the vehicle in a rash and negligent manner and thereby the above said accident had taken placed. While so, the tribunal had failed to fix any contributory negligence on the part of the claimant and had fixed the entire liability as against the insurer. Further, the compensation awarded by the tribunal under other heads are already on the higher side and the same does not require any further enhancement. Accordingly, he prayed for appropriate orders of this Court, fixing contributory negligence on the part of the claimant.

7. Heard the learned counsel for the claimant as well as the insurer and perused the materials available on record.

8. Admittedly, on 29.05.2012 when the claimant was returning home in motor cycle bearing Regn.No.TN-31-AC-7124, an auto rickshaw bearing Regn.No.TN-31-AD-6572 owned by the 1st respondent in CMA.No.3430 of 2017, insured with the insurer, driver by its driver dashed the claimant, as a result of which, the claimant sustained 70% permanent disability and for the

said accident, the FIR came to be registered as against the driver of the auto rickshaw. Though it is claimed by the insurer that the said case filed against the driver of the auto rickshaw was referred to as Mistake of fact, however, the same does not confirm that there is no negligence on the part of the driver of the auto rickshaw. Even then, when the claimant had specifically examined himself as P.W.1 and deposed before the tribunal that the accident happened due to the negligence on the part of the driver of the auto rickshaw, the insurer has neither placed any documentary evidence nor examined the necessary parties to prove that the said accident happened due to the rash and negligent driving of the claimant. Thereby, in the absence of any contra evidence, the Tribunal fixed the entire negligence on the part of the driver of the auto rickshaw and thereby fastened the entire liability as against the insurer, in which this Court does not finds any fault with and the award of the tribunal in respect of fixing negligence is confirmed.

9. Insofar as the quantum of compensation awarded by the tribunal is concerned, a perusal of the material documents particularly the impugned award and the disability certificate issued by the Medical board reveal that, the

claimant sustained 70% permanent disability, therefore this Court does not finds any fault with the percentage method adopted by the tribunal for awarding compensation under the head "permanent disability". However, it is pertinent to note that, the claimant sustained 70% disability, whereas the tribunal awarded compensation only for 60% disability. Therefore, the compensation awarded by the tribunal under the head "Permanent disability" is modified as Rs.2,10,000/- (3,000 * 70 = 2,10,000/-)

10. Further, it is claimed by the claimant that, though the claimant submitted Medical bills to the tune of Rs.5,92,048/-, the tribunal had awarded only a sum of Rs.2,07,750/- under the head "Medical expenses" and the said fact was also not disputed by the learned counsel appearing for the insurer and he cross verified the medical bills and confirmed the medical bills submitted by the claimant to be genuine. After perusing the said medical bills, this Court being satisfied with the same is inclined to enhance the compensation awarded under the head "Medical expenses" from Rs.2,07,750/-to Rs.5,92,048/-.

11. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation are just and reasonable and the same does not warrant any interference of this Court.

12. In view of the above, the compensation awarded by the tribunal is modified as hereunder:-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Permanent Disability	**1,80,000/-**	**2,10,000/- (enhanced)**
Pain and suffering	75,000/-	75,000/-
Loss of Amenities	50,000/-	50,000/-
Attender charges	40,000/-	40,000/-
Transportation and ambulance expenses	82,600/-	82,600/-
Extra nourishment	25,000/-	25,000/-
Medical expenses	**2,07,750/-**	**5,92,048/- (enhanced)**
Future medical expenses	50,000/-	50,000/-
Damages to clothes	1,000/-	1,000/-
Total	**7,11,350/-**	**11,25,648/-**

13. For the reasons aforesaid, the appeal filed by the insurer in CMA.No.1659 of 2018 stands dismissed and the appeal filed by the claimant stands allowed and the impugned Award of the Tribunal is modified by

enhancing the compensation amount from **Rs.7,11,350/- to Rs.11,25,648/-.** The appellant in CMA.No.1659 of 2018/insurance company is directed to deposit the above amount awarded by this Court to the credit of M.C.O.P.No.2362 of 2012 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant/appellant in CMA.No.3430 of 2017 through RTGS within a period of two (2) weeks thereafter, upon production necessary proof for payment of court fee for the enhanced compensation by the claimant. No costs. Consequently, the connected Miscellaneous petition is closed.

31.10.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

M.DHANDAPANI, J.

skt

To

1.The Motor Accidents Claims Tribunal/Principal Sub-Judge,
Cuddalore.

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

C.M.A.Nos.1659 of 2018 & 3430 of 2017
and
CMP.No.13079 of 2018

31.10.2023