IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

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

C.M.A.Nos.1335 of 2020 & 3040 of 2021
and
C.M.P.No.17282 of 2021

Deivasigamani ... Appellant in C.M.A.No.1335 of 2020 & 1st Respondent in C.M.A.No.3040 of 2021

Vs.

1.Kamal ... 1st Respondent in C.M.A.No.1335 of 2020 & 2nd Respondent in C.M.A.No.3040 of 2021

2.The Divisional Manager,
National Insurance Co. Ltd.,
DO No.110, JN Street,
Puducherry – 605 001. ... 2nd Respondent in C.M.A.No.1335 of 2020 & Appellant in C.M.A.No.3040 of 2021

Prayer in C.M.A.No.1335 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of compensation against judgment and decree dated 01.07.2020 in M.C.O.P.No.1808 of 2016 on the file of the Motor Accidents Claims Tribunal, I Additional Sub Judge, Cuddalore.

Prayer in C.M.A.No.3040 of 2021 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 01.07.2020 in M.C.O.P.No.1808 of 2016 passed by the Additional Sub Judge, Cuddalore.

C.M.A.No.1335 of 2020 :

For Appellant	:	Ms.N.Keerthana for M/s.Ramya V. Rao
For Respondents	:	No appearance [R1] Mr.P.Sankaranarayanan [R2]

C.M.A.No.3040 of 2021 :

For Appellant	:	Mr.P.Sankaranarayanan
For Respondents	:	Ms.N.Keerthana for M/s.Ramya V. Rao [R1] No appearance [R2]

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COMMON JUDGEMENT

Both the claimant and the insurance company have filed appeals against the award passed by the Motor Accidents Claims Tribunal, I Additional Sub Judge, Cuddalore in M.C.O.P.No.1808 of 2016. The claimant has filed C.M.A.No.1335 of 2020 and the insurance has filed C.M.A.No.3040 of 2021. For brevity, the appellant in C.M.A.No.1335 of 2020 is hereinafter referred to as claimant and the appellant in C.M.A.No.3040 of 2021 is hereinafter referred to as insurance company.

2. As per the claim petition, on 25.03.2016 at about 15.00 hours, when

the claimant was walking from north to south, on extreme left mud portion on Valavanur to Melpattampakkam road, opposite to Arjunan House, the Honda Aviator Moped bearing Regn.No.TN-31-BA-8258, which was owned by the first respondent and insured with second respondent, came from opposite direction in a rash and negligent manner and dashed against the claimant, thereby the claimant had sustained grievous injuries all over his body. Therefore, the claimant filed a claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the road accident.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked 9 documents viz., Ex.P.1 to Ex.P.9. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2. The Tribunal has marked the disability certificate of the claimant as Ex.C.1. After adjudication, the Tribunal passed an award awarding a sum of Rs.1,12,628/- as compensation by fixing 20% contributory negligence on the claimant. Challenging the same, both the claimant and the insurance company are before this Court.

4. The learned counsel appearing for the insurance company submitted that, as per Ex.P.1/FIR, the claimant claims that he is a pedestrian walking on

the road and the insurance company insured vehicle came from opposite direction and dashed against him, however, in the cross examination, the claimant admitted that he was under the influence of alcohol and he himself fell down on the road and he has not sustained injuries. When the claimant admitted that the insurance company insured vehicle was not involved in the accident, fastening liability on the insurance company by the Tribunal is wholly erroneous. Further, he submitted that, as per AR copy, the claimant himself admitted that he went to the doctor under the influence of alcohol and the doctor also recorded the influence of alcohol in the AR copy. However, the Tribunal fastened the liability at 20% as against the claimant and 80% against the insurance company, which is wholly unsustainable. Accordingly, he prays for allowing the appeal by the insurance company.

5. Per contra, the learned counsel appearing on behalf of the claimant did not dispute the facts submitted by the learned counsel for the insurance company. She also submitted that, statement in the FIR is contrary to cross examination before the Tribunal, thereby the Tribunal fixed 20% negligence on the claimant and 80% negligence as against the insurance company, which cannot be interfered with. Further, she submitted that, even a perusal of the AR copy reveals that the vehicle insured with the insurance company dashed

against the claimant, thereby the said accident had happened and as per AR copy and admission in the cross examination, the Tribunal fixed 20% negligence against the claimant and 80% against the insurance company, which is wholly unsustainable. It is the further submission of the learned counsel that three fingers of the claimant were amputated, thereby, he is entitled for compensation towards loss of disability by adopting multiplier method towards functional disability however, the same was not awarded by the Tribunal. Accordingly, she prays for enhancement of compensation in favour of the claimant.

6. Heard the learned counsel appearing on behalf of the claimant as well as the insurance company and also perused the materials available on record.

7. A perusal of the entire papers including the award passed by the Tribunal below would show that, though the claimant had deposed that the accident had happened due to the rash and negligent driving of the driver of the insurance company insured vehicle, however, in order to disprove the same, the insurance company has not examined any eye-witness to the occurrence. Therefore, the Tribunal has arrived at a conclusion that as insurer of the offending vehicle, the insurance company is liable to compensate the claimant.

Further, though the claimant had travelled in a motorcycle under the influence of alcohol, however, by suppressing the same, the claimant has made claim before the Tribunal as if he was a pedestrian, thereby, the Tribunal had arrived at a conclusion that the claimant should also be fastened with negligence. Therefore, based on the evidence available, the Tribunal fastened 20% contributory negligence against the claimant and 80% negligence against the insurance company, which cannot be said to be erroneous. Therefore, the findings of the Tribunal with regard to negligence is confirmed.

8. It is the contention of the learned counsel appearing for the claimant that, the claimant was employed as security and in view of the amputation of three fingers, would definitely have a negative effect in the earning of the claimant, thereby the disability suffered by the claimant is a functional disability. A perusal of the award reveals that, since the removal of fourth finger in his leg will not affect the claimant to continue his avocation as security, compensation cannot be awarded to the claimant by adopting multiplier method. Therefore, in order to ascertain the disability suffered by the claimant, he was referred to the Medical Board. Ex.C.1 is the disability certificate with regard to assessment of the medical board with regard to disability of the claimant, which has been assessed the disability the claimant at

15%. By accepting the same, the Tribunal has awarded a sum of Rs.45,000/- towards partial permanent disability by fixing a sum of Rs.3,000/- per percentage of disability, which is just and reasonable and the same cannot be interfered with. Further, this Court is of the view that the compensation awarded by the Tribunal under the other heads are also just and reasonable and no interference is warranted.

9. For the reasons aforesaid, the Civil Miscellaneous Appeals are dismissed and the judgment and decree passed by the Motor Accidents Claims Tribunal, I Additional Sub Judge, Cuddalore in M.C.O.P.No.1808 of 2016, dated 01.07.2020 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

08.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

1.The Motor Accidents Claims Tribunal,
I Additional Sub Judge,
Cuddalore.

2.The Section Officer,

V.R.Section,
High Court, Madras.

M.DHANDAPANI, J.,

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C.M.A.Nos.1335 of 2020 & 3040 of 2021

08.12.2023