IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM

**THE HONOURABLE MR . JUSTICE A.A.NAKKIRAN**

**C.M.A.No.2888 of 2014**

**and**

**Cross Obj.No.78 of 2015**

**AND M.P.No.1 of 2014**

**In CMA.No.2888 of 2014**

The Manager,
United India Insurance Co., Ltd.,
Silingi Buildings,
No.134, Greams Road, Chennai-6. ...Appellant

Vs.

1.C.Madurai
2.T.Deendayalan
(R2 was set exparte before the lower court) ... Respondents

**Prayer**: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 02.07.2013 made in MCOP.No.107 of 2010 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court, Chennai)

For Appellant :Mr.M.J.Vijayaraaghavan
For Respondents :Mr. A.V. Jayganesh for R1
for Mr.A.A.Venkatesan

**In Cross Obj.No.78 of 2015**

C.Madurai ... Appellant

Vs.

1. United India Insurance Co., Ltd.,
Silingi Buildings,
No.134, Greams Road, Chennai-6

2. T.Deenadayalan
(R2 was set exparte before the lower court) ...Respondents

**Prayer**: Cross Objection is filed under Order 41 Rule 22 of CPC to set aside the judgment and decree dated 02.07.2013 made in MCOP.No.107 of 2010 on the file of the Motor Accidents Claims Tribunal (V Small Causes Court, Chennai) and allow this Cross Objection by enhancing the additional compensation of Rs.3,00,000/-.

For Appellant :Mr.A.V.Jayganesh
for Mr.A.A.Venkatesan

For Respondents :Mr. M.J.Vijayaraaghavan for R1

**COMMON JUDGMENT**

The appellant/Insurance Company has preferred the present appeal in CMA.No.2888 of 2014 and claimant has filed Cross Objection No.78 of 2015 against the award and decree, dated 02.07.2013, passed by the Motor Accident Claims Tribunal/ (V Small Causes Court, Chennai), in MCOP No. 107 of 2010.

2.As per the claim petition, on 06.03.2009, at about 17.30 hours, while the claimant was carefully crossing the T.H.Road near HDFC Bank, Old Washermenpet, Chennai, from West to East direction, at that time, the motor cycle bearing Regn.No.TN-20-V-1956 came from North to South direction, in a rash and negligent manner and dashed against the claimant and thereby, he sustained grievous injuries. The 1 respondent as the owner and the 2nd respondent as insurer are jointly and severally liable to pay compensation of Rs.5,38,600/-. Due to the said impact, the claimant sustained fracture of both bone left leg with alcohol with drawal syndrome/delinium and was treated as in-patient from 18.03.2009 to

26.03.2009 and fasciectomy and wound debridement was done. He was admitted in the Apollo Hospital. The first respondent/claimant has filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation. On consideration of the materials and evidences available on record, the Tribunal has awarded a total compensation of Rs.5,38,600/- with interest at the rate of 7.5% per annum from the date of the claim petition.

3. The Tribunal on appreciation of both oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the motor cycle and hence, directed the Insurance Company to pay a sum of Rs.5,38,600/- with interest at the rate of 7.5% per annum from the date of claim till the date of realisation as compensation to the claimant.

4. Challenging the same, the appellant/ Insurance Company has filed the present Civil Miscellaneous Appeal.

5. The learned counsel for the appellant/Insurance Company has

submitted that the Tribunal failed to apply the principle of contributory negligence on the part of the claimant/1s respondent herein, who was under the influence of Alcohol, on the date of accident, while crossing the road in a non-pedestrian cross and for which the degree of negligence ought to have been determined against the victim and also against the rider of impugned motor cycle involved in the accident and liability also to be apportioned accordingly. The new Presiding Officer was posted in the said court, who delivered above judgment much after the evidence was closed long ago and kept pending for delivering judgment on the ground that certain clarification to be made by the counsel, who appeared for the claimant who had filed only duplicate copy of the medical bills. The entire judgment of the claims Tribunal is vitiated and therefore the amount of compensation awarded against the appellant is liable to be set aside. The original medical bills dated 04.04.2009 issued by the Apollo Hospital was not produced, instead of the same, the duplicate copy was filed and marked as Ex.P9 which ought not to have entertained. He might have used the original medical bills for reimbursement purpose. It ought to have rejected the said claim in the absence of any original bills marked as exhibits. The court below erred in after having awarded compensation of Rs.50,000 under the head of pain and suffering and Rs.90,000/- under the head of physical disability, once again, awarding further sum of Rs.25,000/- under the head of amenities charges in the case of non schedule injuries and the same is unwarranted. On the other hand, it is submitted that the compensation awarded by the Tribunal is exorbitant, arbitrary and without any basis. Hence, he prays to allow this appeal.

6. The learned counsel for the first respondent/claimant has submitted that the Tribunal has correctly considered the materials and evidence available on record and has arrived at the compensation, which is fair, just and reasonable and correctly fixed the liability on the part of the appellant Insurance Company and hence the Judgment of the Tribunal does not require any interference at the hands of this Court.

7.Heard the learned counsel for the appellant/Insurance Company as well as the learned counsel for the first respondent and perused the materials available on record carefully.

8. As far as the negligence aspect is concerned, the learned counsel for the appellant/Insurance Company contended that the claimant has suddenly crossed the road under the influence of alcohol, and it is a non-pedestrian cross and thereby invited the accident. As seen from the records, it is clear that the claimant was a pedestrian. The Tribunal has considered the contentions made in the FIR as well as the oral evidence and arrived at a conclusion that the accident had occurred due to the rash and negligent driving of the driver of the motor cycle bearing Regn.No...TN-20-V-1956, who is the 1st respondent in MCOP No.107 of 2010, and the injured. claimant was also responsible for the accident and had fixed the negligence on the part of the appellant/insurance company alone and failed to observe contributory negligence on the part of the injured-claimant.

9. On perusal of award passed by the Tribunal, it is seen that the Tribunal, as per the present day cost of living has fixed the compensation. Considering the age and the nature of injuries caused to the claimant, the Tribunal has arrived at a just and proper compensation of Rs.5,38,600/-.

10. With regard to the manner in which the accident took place, as per Ex.P1-First Information Report, it is seen that due to the dashing of the offending vehicle on the injured person who is under the influence of alcohol, he sustained grievous injuries. The Tribunal has disbelieved the version that the accident had occurred only due to the driver of the offending vehicle,leading to the injuries of the claimant and awarded the compensation to be payable by the appellant/Insurance Company on behalf of the second respondent, without fixing any negligence on the part of the claimant/injured since he was under the influence of alcohol and crossed in a non pedestrial cross. Taking note of the facts and circumstances of the case, this Court feels that the injured ought to have been careful and vigilant in crossing the road, that too, when he was under the influence of liquor. Thus, fixing 10% contributory negligence on the part of the injured would be proper. Hence, this court fix 10% of contributory negligence on the claimant and 90% on the appellant /Insurance Company.

11. In the result,

(i) The Appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.4,84,740/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.107 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the claimant along with accrued interest through RTGS within a period of two weeks thereafter.

(iii) The cross objector/claimant is directed to pay the necessary court fee, if any, for the modified compensation and the Registry is directed to draft the decree, after receipt of necessary court fee.

12. Accordingly, CMA.No.2888 of 2014 filed by the Insurance Company is partly allowed by modifying the award of the Tribunal from Rs..5,38,600/- to Rs.4,84,740/- Cross. Obj. No.78 of 2015 filed by the claimant is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

**24.04.2023**

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order
gv

**A.A. NAKKIRAN.J.**

GV

To

1.The Motor Accidents Claims Tribunal
(V Small Causes Court, Chennai)

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

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