IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.Nos.4811 of 2019 & 463 of 2020
and
CMP.No.27640 of 2019

CMA.No.4811 of 2019:

United India Insurance Co. Ltd.,
No.134, Silingi Building,
Greams Road, Chennai – 600 034. ...Appellant

Vs.

1. R.Dinesh Kumar
2. M.Iqbal (remained exparte) ...Respondents

CMA.No.463 of 2020:

R.Dinesh Kumar ...Appellant

Vs.

1. M.Iqbal
2. United India Insurance Co. Ltd.,
   No.134, Silingi Building,
   Greams Road, Chennai – 600 034. ...Respondents

Common Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, as against the decree and judgment passed in MCOP.No.4580 of 2013 dated 29.04.2019 on the file of the Motor Accident Claims Tribunal – Chennai, III Judge, Court of Small Causes, Chennai.

In both CMA's.:

For Appellant	: M/s.R.Vijaya Kamala (in CMA.No.4811 of 2019) : Mr.Amar.D.Pandiya (in CMA.No.463 of 2020)
For Respondents	: Mr.Amar.D.Pandiya, (for R1 in CMA.No.4811 of 2019) : M/s.R.Vijaya Kamala (for R2 in CMA.No.463 of 2020) : R2 – Exparte, (in CMA.No.4811 of 2019) : Notice not ready, for R1 (in CMA.No.463 of 2020)

COMMON JUDGMENT

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

2. These Appeals have been filed challenging the award passed in MCOP.No.4580 of 2013 dated 29.04.2019 on the file of the Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

3. For brevity, the appellant in CMA.No.4811 of 2019 is hereinafter referred to as the insurer and the appellant in CMA.No.463 of 2020 is hereinafter referred to as the claimant and the 1st respondent in CMA.No.463 of 2020 is hereinafter referred to as the owner.

4. The case of the claimant is that, on 28.05.2013, at about 17.00 hours, when the claimant was riding the bicycle, a share auto bearing Regn.No.TN-07-Z-6237, driven by its owner, insured with the insurer herein, came in a high speed and hit the bicycle in which the claimant was travelling, as a result of which, the claimant sustained grievous injuries and got admitted in the hospital. Thereby, the claimant filed a claim petition claiming a compensation of Rs.6,00,0000/- for the injuries and loss of income sustained by him. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.84,100/-. Aggrieved with the said order, the claimant has come up with the appeal in CMA.No.463 of 2020 seeking enhancement of the compensation fixed and the insurer had preferred an appeal in CMA.No.4811 of 2019, questioning the liability of the insurer.

5. Learned counsel for the claimant submitted that, the above said accident happened solely due to the rash and negligent driving of the owner cum driver of the share auto and the same is evident from the Ex.P1, FIR filed as against the owner of the share auto. Further, at the time of accident, the claimant was aged about 19 years and was studying 12th standard and due to the above said accident, he sustained 10% permanent disability, due to which, the claimant is unable to pursue his higher studies as like his friends and was unable to do his own personal work as earlier. While so, instead of adopting multiplier method, the tribunal had adopted percentage method and awarded a meagre compensation of Rs.30,000/- under the head Disability, which is not sustainable. Further, the compensation awarded under other heads are also on lower side and the same has to be enhanced.

6. Learned counsel appearing for the insurer submitted that, though the accident had happened on 28.05.2013, however, the claimant got admitted in the hospital only on 22.06.2013, i.e., after a period of one month, which raises various doubts and the FIR also came to be filed only after one month and the delay in filing the FIR and getting admitted in the

hospital for treatment clearly shows that no such accident had taken placed and only with an ill-motive to get compensation at the hands of the insurer, the claimant had filed the claim petition. While so, without considering any of the above said facts, the tribunal had awarded compensation in favour of the claimant and had fastened the entire liability as against the insurer which is not sustainable.

7. Heard learned counsel for the claimant as well as the insurer and perused the material documents placed on record.

8. The major contention of the learned counsel for the insurer relates to the fact that the FIR which has been marked as Ex.P1, was filed only after a period of one month from the date of occurrence of the accident.

9. Though it is claimed by the insurer that the FIR has been filed only after one month from the date of occurrence of the alleged accident and the claimant had taken treatment only after one month, however, the same cannot be taken as a ground to negative the claim of the claimant, as the same will not vitiate the proceedings.

10. Further, when the claimant examined himself as PW1 and narrated the manner in which the accident had taken placed and had clearly stated that the accident had happened solely due to the rash and negligent driving of the owner cum driver of the share auto and when the FIR has clearly pointed the finger on the offending vehicle for rash and negligent driving, the mere fact that the FIR has been lodged only after one month alone cannot be the basis to negative the claim of the claimant.

11. Further, it is to be pointed out that while the insurer had questioned the delay in the lodging of Ex.P-1 - the FIR, however, Ex.P-2, the accident register and discharge summary and Ex.P-5, discharge summary have been marked by the claimant to prove the injuries suffered by the claimant. There is a clear statement in the accident register in which the claimant had sustained the injuries. The said document being a contemporaneous record, has not been countered in any manner by the insurer. The mere delay in the filing of the FIR cannot be held to be fatal, if through other documentary evidence the said FIR is proved to be acceptable and genuine. In the case on hand, the genuineness of Ex.P-1 stands

established through Exs.P-2 and P-5 and in such circumstances, the deposition of P.W.1 coupled with the aforesaid documents clearly establish the accident and, therefore, the contention in this regard by the insurer deserves to be rejected. The Tribunal, after considering the oral and documentary evidences, has fixed the negligence on the part of the driver cum owner of the offending vehicle and fastened the liability as against the insurer and the said findings of the Tribunal cannot be interfered with.

12. With regard to quantum of compensation, it is the claim of the claimant that the compensation awarded by the Tribunal is on the lower side, which requires reconsideration. In this regard, this Court perused the impugned award passed by the Tribunal and upon perusal of the impugned award, this Court is of the view that, the compensation awarded under the heads Pain and suffering, Attender charges and future medical expenses are on lower side and the same has to be enhanced.

13. Considering the age of the claimant and the nature of injuries sustained by him, this Court is inclined to fix a sum of Rs.4,000/- per

percentage and therefore, the compensation awarded under the head Disability stands enhanced to **Rs.40,000/-** (10% * Rs.4,000/- = Rs.40,000/-).

14. In view of the above, the impugned award passed by the tribunal is modified as hereunder:-

S.No.	***Description***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Disability	**30,000/-**	**40,000/- (enhanced)**
2	Pain and Sufferings	**10,000/-**	**25,000/- (enhanced)**
3	Extra nourishment	5,000/-	5,000/-
4	Transport to Hospital	5,000/-	5,000/-
5	Damages to clothes	500/-	500/-
6	Attender charges	**3,600/-**	**5,000/- (enhanced)**
7	Medical expenses	10,000/-	10,000/-
8	Future Medical Expenses	**5,000/-**	**10,000/- (enhanced)**
9	Loss of Education	10,000/-	10,000/-
10	Loss of amenities	5,000/-	5,000/-
	Total	**84,100/-**	**1,15,500/-**

15. For the reasons aforesaid, the Appeal in CMA.No.4811 of 2019 filed by the insurer stands dismissed and the Appeal in CMA.No.463 of

2020 filed by the claimant stands **partly allowed** and the impugned award passed in MCOP.No.4580 of 2013 dated 29.04.2019 stands modified by enhancing the compensation from **Rs.84,100/- to Rs.1,15,500/-**. The insurer /appellant in CMA.No.4811 of 2019 is directed to deposit the above compensation awarded by this Court to the credit of MCOP.No.4580 of 2013 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 four (4) 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/the appellant in CMA.No.463 of 2020 through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

14.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

M.DHANDAPANI, J.

skt

To:

1. The Motor Accident Claims Tribunal, III Judge, Court of Small Causes, Chennai.

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

C.M.A.Nos.4811 of 2019 & 463 of 2020
and
CMP.No.27640 of 2019

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