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C.M.A.Nos.208 & 1403 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On : 20.07.2023

Judgment Delivered On : **30.01.2024**

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A.Nos.208 & 1403 of 2018

and

CMP.No.2449 of 2018

In CMA.No.208 of 2018 :

The Manager,
The Oriental Insurance Company Limited,
New No.377, Old No.272, Anna Salai,
3rd Floor, Teynampet,
Chennai – 600 018.

... Appellant

Versus

1.K. Ravi
2.Suresh Rajagopalan
(set exparte before the Tribunal)

...Respondents

In CMA.No.1403 of 2018 :

K. Ravi

... Appellant

Versus

1. Suresh Rajagopalan
(set exparte before the Tribunal)

2. The Manager,
The Oriental Insurance Company Limited,
New No.377, Old No.272, Anna Salai,
3rd Floor, Teynampet,
Chennai – 600 018.

... Respondents



C.M.A.Nos.208 & 1403 of 2018

Common Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 22.09.2017 made in M.C.O.P.No.100 of 2016, on the file of the Motor Accident Claims Tribunal (II-Additional District Court), Tindivanam.

Appearance in CMA.208 of 2018 :

For Appellant : Mr.S. Manohar
For Respondents : Ms. A. Subadra (for R1)
: Not ready in notice (for R2)

Appearance in CMA.No.1403 of 2018 :

For Appellant : Ms. A. Subadra
For Respondents : Mr. Elveera Ravindran (for R2)
: Not ready in notice (for R1)

COMMON JUDGMENT

Both the Civil Miscellaneous Appeals have been filed challenging the Judgment and Decree dated 22.09.2017 passed in M.A.C.T.O.P.No.100 of 2016, on the file of the Motor Accident Claims Tribunal (II-Additional District Court), Tindivanam.

2. For the sake of convenience, the rank of the parties mentioned by the Tribunal has been taken as it is here.



C.M.A.Nos.208 & 1403 of 2018

3. The brief facts of the case are as follows:

(i) The case of the petitioner is that on 20.01.2013 at about 4:00 P.M. while the petitioner was riding a motorcycle bearing Registration No. TN 32 T 1669 towards Tindivanam at the extreme left side on the road by following the road traffic rules, when he was nearing the Hotel Ariyas, the first respondent's vehicle, a Ford Car bearing Registration No. TN 22 B 9925, which was driven by its driver one Manivel in a rash and negligent manner with over speed without following the road traffic rules dashed against the petitioner's motorcycle. Subsequent to the said accident, the petitioner sustained multiple injuries and he was immediately taken to the hospital by 108 Ambulance to the nearest Government Hospital, where he was given first aid. Thereafter, he was shifted to the MIOT Hospital, Chennai, for further treatment, where he was admitted as an inpatient from 21.01.2013 to 12.02.2013 and from 09.05.2013 to 14.05.2013 and also underwent several surgeries for which, he spent a sum of Rs.7 Lakhs for his treatment. Therefore, the petitioner filed a claim petition, claiming a sum of Rs.25 lakhs as compensation for the injuries sustained by him.



C.M.A.Nos.208 & 1403 of 2018

4. The brief facts of the case of the respondents are that the first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle, as per the counter affidavit filed by the second respondent/Insurance Company. It is the main contention of the Insurance Company that the accident had occurred only due to rash and negligent manner of driving of the driver of the first respondent. Therefore, direction to both the first respondent and the second respondent are jointly and severally liable to pay the compensation to the petitioner, is erroneous one. Further, it is stated that the First Information Report was also registered against the petitioner in Crime No.90 of 2015 under Section 279 and 337 of I.P.C., therefore, from it is clear that the accident happened only due to reckless driving of the petitioner and not by the negligence of the driver of the first respondent. Therefore, fixing the liability and directing the first and second respondent are liable to pay the compensation jointly to the petitioner for the injuries sustained by him, is without any basis, and it is for the petitioner to prove the manner of the accident.

5. In order to prove the case of the petitioner, on the side of the



C.M.A.Nos.208 & 1403 of 2018

petitioner, he himself examined as P.W.1, and besides that he has marked 15 documents as Ex.P1 to Ex.P15. On the side of the respondents, no oral and documentary evidence was produced. After hearing the arguments on either side and considering the material facts, the Tribunal awarded a sum of Rs.7,31,660/- as compensation to the petitioner.

6. Now challenging the quantum of compensation awarded by the Tribunal and fixing the negligence on the part of the driver of the insured vehicle, the Insurance Company filed the CMA.No.208 of 2018. On the ground that the compensation awarded by the Tribunal is not just and adequate compensation, the petitioner filed the CMA.No.1403 of 2018 for enhancement of compensation.

7. Since both appeals are arising out of one and the same order of the Tribunal, both the appeals are taken up for hearing together and disposed of by this common judgment.

8. The learned counsel for the appellant/Insurance Company



C.M.A.Nos.208 & 1403 of 2018

would submit that the accident had occurred only due to rash and negligent manner of the driver of the car belonging to the first respondent bearing Registration No.TN-22-BA-9925. A First Information Report was registered against the petitioner, based on the complaint given by the driver of the car of the first respondent. However, subsequently, the said First Information Report was closed, since no charge sheet was filed. Therefore, the registration of the case against the petitioner would not fasten the liability on him. The Tribunal has to consider the material evidence placed before it and not based on the case registered by the police. Moreover so, in this case, no charge sheet was filed against the petitioner. Further, the first respondent has not come to the witness box and the driver of the first respondent, who drove the vehicle bearing Registration No.TN-22-BA-9925 has also not entered into the witness box and he was not subjected to the cross-examination. Therefore, the Tribunal has also rightly fixed the liability and upheld that the accident had occurred only due to the rash and negligent driving of the driver of the car which belongs to the first respondent and the same was insured with the second respondent, hence, directed them to pay the compensation jointly and severally to the petitioner. However, the Tribunal has failed to consider the fact that the



C.M.A.Nos.208 & 1403 of 2018

petitioner had claimed compensation of Rs.25 Lakhs, whereas, the Tribunal has awarded only a sum of Rs.7,31,700/- which is a very meagre amount and it does not reflect the just compensation.

9. The learned counsel for the appellant/claimant would submit that the Tribunal failed to consider percentage of disability and instead of applying multiplier method, it had fixed a sum of Rs.3,000/- per percentage of disability at the rate of 46%, which is against the proportion of law. Even though the petitioner sustained multiple injuries and the Doctor also opined that the petitioner sustained injury of an open ankle joint fracture with fibula fracture right; a compound grade 3B fracture on both bones in the right forearm; Open tendon injury on the right middle and ring fingers, non union fracture shaft radius with elastic nail in right, S/P plate osteosynthesis right ulna elastic nailing right radius with soft tissue cover and multiple injuries on all over the body, the Tribunal ought to have applied the multiplier method for the disability taking into account the injuries sustained by the petitioner.

10. Further, she would submit the Tribunal has failed to consider earning capacity of the petitioner before awarding the compensation under



C.M.A.Nos.208 & 1403 of 2018

the head of loss of earning, without adopting the multiplier method, it has calculated as per the percentage of the disability, and the Tribunal awarded only a lesser amount under the head of loss of income during the period of treatment taken by the petitioner, attendant charges, pain and sufferings and those heads have to be enhanced. Further, the Tribunal failed to consider the future medical expenses, based on the disability, and it has totally neglected to award the compensation under the heads of mental agony and future prospects. According to the petitioner, the Tribunal ought to have awarded more compensation in all these heads considering the disability of the petitioner. Therefore, the petitioner/claimant filed the CMA.No.1403 of 2018, for enhancement of compensation.

11. The learned counsel appearing for the Insurance Company would submit that the accident occurred only due to rash and negligent driving by the petitioner himself, while he was riding the two wheeler with a high speed without following the traffic rules and dashed against the first respondent's car, thereby, the petitioner sustained injuries and it was not by the rash and negligent driving of the driver of the car of the first respondent. Further he would submit that the driver of the car of the first



C.M.A.Nos.208 & 1403 of 2018

respondent alone gave the complaint against the petitioner and the case was registered in Crime No.90 of 2015. The petitioner did not give any complaint against the driver of the car of the first respondent. If at all, the accident had occurred due to rash and negligent driving of the driver of the car of the first respondent, the petitioner ought to have given the complaint against the driver of the car of the first respondent. Therefore, the Tribunal failed to consider this fact and fixed the liability on the driver of the first respondent and the second respondent/Insurance company was liable to pay the compensation, which is erroneous. He would further submit that the compensation awarded by the Tribunal under the head of medical expenses is very high and the Tribunal failed to consider the medical bills, which were marked under Ex.P7, but, it is not a final bill. The finding of the Tribunal on a technical ground that the First Information Report was closed under Section 468(2) of Cr.P.C., and thereby, fixing the liability on the respondents is an erroneous one, as the Tribunal failed to fix the contributory negligence on the part of the petitioner. Further he would submit that even the Doctor, who gave treatment issued the disability certificate to the petitioner was not examined by the Tribunal. Without considering the nature of disability fixed by the medical officer, the award



C.M.A.Nos.208 & 1403 of 2018

of the Tribunal granting a sum of Rs.4,77,660/- towards medical expenses at the rate of 46%, is also erroneous. Further, he would submit that the Tribunal has awarded a sum of Rs.15,000/- towards Attender Charges without any basis, and therefore, the award passed by the Tribunal is liable to be set aside, and the appeal filed by the Insurance Company is liable to be allowed.

12. Heard the learned counsel on both sides and perused the materials available on record.

13. In the case on hand, the accident is not in dispute and the injuries sustained by the petitioner are also not in dispute. As far as the learned counsel for the petitioner/claimant is concerned, the accident is only due to rash and negligent driving of the driver of the first respondent's car, bearing Registration No. TN-22-BA-9925, which belongs to the first respondent, which is insured with the second respondent/Insurance company, therefore, being the owner of the vehicle and being the insurer of the vehicle, both are liable to pay the compensation jointly and severally to the petitioner. According to the learned counsel for the respondents, the



C.M.A.Nos.208 & 1403 of 2018

accident occurred only due to rash and negligent act of the petitioner himself and not by the driver of the first respondent's car, and the complaint was lodged only against the petitioner and the case was registered against the petitioner alone, and the petitioner did not file any complaint against the driver of the car. Though the First Information Report was filed against the petitioner, it was closed only due to the non-filing of the Charge sheet within the stipulated time. Therefore, the finding of the Tribunal fixing the liability based on the closure of the First Information Report on the point of limitation, is erroneous.

14. In order to substantiate the contentions of the petitioner, the petitioner examined himself as P.W.1, and marked 15 documents from Ex.P1 to P15. Though the respondents have denied the manner of the accident and the liability, the respondents have not cross-examined and nothing was elucidated during the cross-examination by the respondents. Not even the driver of the car of the first respondent was subjected to the cross-examination. Only based on the closure of the First Information Report, the Tribunal fixed the liability on the respondents. Since the petitioner himself came to the witness box and spoken about the manner of



C.M.A.Nos.208 & 1403 of 2018

the accident and neither the first respondent nor the second respondent accepted the said fact in the counter affidavit, have not produced any material to show that have examined any witnesses. It is a well-settled proposition of law that before passing the award, the Tribunal has to see the manner of the accident and fix the liability only based on the materials placed before it and not based on the materials with any Court or any prosecution case against the petitioner. The very compensation is award to the petitioner for the multiple injuries sustained by him. Therefore, the petitioner filed the claim petition before the Tribunal stating that the accident had occurred due to rash and negligent driving by the driver of the car of the first respondent. When the initial burden has been proved by the petitioner, the respondents have not rebutted the same.

15. Therefore, the Appellate Court being a fact finding Court while re-appreciating the evidence, and in the absence of any evidence from the respondents except the evidence by the petitioner, this Court finds that the accident had occurred only due to the rash and negligent driving of the driver of the car bearing Registration No.TN-22-BA-9925, which belongs to the first respondent and the same is insured with the second



C.M.A.Nos.208 & 1403 of 2018

respondent, and therefore, the finding of the Tribunal that the first respondent and the second respondent are jointly and severally liable to pay the compensation to the petitioner requires no interference.

16. As far as the quantum of compensation is concerned, the petitioner was earning a sum of Rs.30,000/- per month by doing milk vending business and agricultural activities. But, the Tribunal failed to consider the same and fixed the notional income of Rs.6500/- per month. While this Court considering the pleadings made in the claim petition that he is a milk vendor and is an agriculturist, is not able to find any material to show that he was earning a sum of Rs.30,000/- per month. Therefore, in the absence of any oral and documentary evidence, this Court cannot accept the verbal contention of the petitioner, and considering the age of the petitioner, the notional income fixed by the Tribunal as Rs.6,500/- per month is reasonable and this Court does not find any reason to interfere with the same.

17. As far as the medical expenses is concerned, the petitioner's medical bills marked under Ex.P7, clearly show that the petitioner paid the



C.M.A.Nos.208 & 1403 of 2018

amount mentioned in the bills as per Ex.P7, therefore, a sum of Rs.4,77,656/- has been spent for the medical expenses by the petitioner is accepted.

18. As far as the disability is concerned, though the petitioner has produced the disability certificate, which shows the disability assessed by the Doctor is at the rate of 46% and the same was marked as Ex.P15, however, the Doctor who examined the petitioner has not been examined or the Doctor who gave the disability certificate was also not examined. Considering the nature of injury sustained by the petitioner and the discharge summary marked under Ex.P5, the disability certificate/Ex.P15 and the medical bills/Ex.P7, this Court while reappreciating the oral and documentary evidence of the petitioner, finds no reason to reduce the compensation awarded towards the disability to the petitioner. However, considering the facts and circumstances of the case, the Tribunal also adopted the percentage method for disability and considering the avocation of the petitioner, calculated a sum of Rs.3000/- per percentage for disability of the petitioner and a sum of Rs.1,38,000 was awarded, which requires no interference.



C.M.A.Nos.208 & 1403 of 2018

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19. As far as the treatment is concerned, considering the treatment for the multiple injuries sustained by the petitioner, the Tribunal has awarded the compensation on several heads and it was also reasonable, therefore, this Court does not find any reason to interfere with the other heads awarded by the Tribunal and it holds that it is just and fair compensation. Further, this Court finds no merits in both the appeals, hence, both appeals are liable to be dismissed.

20. Accordingly, both the Civil Miscellaneous Appeals are dismissed and the Award passed in M.C.O.P.No.100 of 2016, dated 22.09.2017 by the Motor Accident Claims Tribunal (II-Additional District Court), Tindivanam, is confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

30.01.2024

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



C.M.A.Nos.208 & 1403 of 2018

1. The Motor Accident Claims Tribunal
(II-Additional District Court), Tindivanam.
2. The Section Officer,
V.R. Section, High Court of Madras.

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C.M.A.Nos.208 & 1403 of 2018

P.VELMURUGAN, J.

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Pre-Delivery Judgment in

C.M.A.Nos.208 & 1403 of 2018
and
CMP.No.2449 of 2018

30.01.2024