IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 28 / 06 / 2024

JUDGMENT DELIVERED ON: 05 / 07 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.1631 OF 2022
AND
CMP NO.12121 OF 2022 IN CMA NO.1631 OF 2022
AND
CROSS OBJ. NO.87 OF 2022

CMA NO.1631 OF 2022

The United India Insurance Co. Ltd.,
Cuddalore. ... Appellant / 2nd Respondent

Vs.

1.Antoney Fernando ... 1st Respondent / Petitioner
2.R.Sivakumar ... 2nd Respondent / 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 24.09.2021 made in M.C.O.P.No.231 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub Court), Gingee.

For Appellant	:	Mr.D.Bhaskaran
For Respondent -1	:	Mr.T.Danyakumar
For Respondent-2	:	Served – No appearance

CROSS OBJ. NO.87 OF 2022

Antony Fernando ... Appellant / 1st Respondent

Vs.

1.The United India Insurance Co. Ltd.,
Cuddalore. ... 1st Respondent / Appellant

2.R.Sivakumar ... 2nd Respondent / 2nd Respondent

PRAYER: Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code, 1908, to enhance the compensation awarded vide award dated 24.09.2021 made in MCOP No.231 of 2012 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Gingee.

For Appellant	:	Mr.T.Danyakumar
For Respondent-1	:	Mr.D.Bhaskaran
For Respondent-2	:	Served – No appearance

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved with the Award dated September 24, 2021 passed by the 'Motor Accident Claims Tribunal (Sub Court), Gingee' ('Tribunal' for short) in M.C.O.P.No.231 of 2012, the second respondent therein - Insurance Company has preferred C.M.A.No.1631 of 2022 praying to set aside the Award, while the petitioner therein namely Antony Fernando has preferred Cross Objection No.87 of 2022 to enhance the compensation.

2.For the sake of convenience, hereinafter the parties will be referred to as per their array before the Tribunal in the Motor Claim Original Petition.

Petitioner's case:

3.On October 30, 2011, at about 06.15 a.m., when the petitioner was riding his Motorcycle, bearing Registration No. TN 32-M-8093 from Puliyakulam Church towards Gandhipuram, a Car, bearing Registration No.TAR-5670, belonging to the first respondent, driven by him in a rash and negligent manner from West to East direction, collided with the petitioner's Motorcycle. Due to the accident, the petitioner sustained severe fracture and injuries. The accident happened due to the rash and negligent driving of the Driver of the first respondent's vehicle. Initially, the petitioner was admitted in Coimbatore Medical College and Hospital, Coimbatore, wherein he was administered first-aid. Thereafter, he was admitted in Ganga Hospital, Coimbatore for further treatment. The petitioner was treated as an inpatient for more than 115 days and is still under treatment. He has not yet recovered fully. The petitioner is not in a position to walk, sit or stand as before and the petitioner is completely impaired and disabled. Hence, the petitioner is not in a position to return to work, resulting in continuous loss of income. He has spent more than Rs.25,00,000/- towards medical expenses and he continues to incur medical expenses till date. The first respondent's vehicle has been insured with the second respondent – Insurance Company. Hence, both the respondents are liable to pay compensation to the petitioner. Accordingly, the petitioner seeking compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) with interest and costs, filed the above Claim Petition before the Tribunal.

4.Though substituted service was effected, the first respondent did not appear and contest the petition. Hence, he was set *ex parte* before the Tribunal.

5.The second respondent – Insurance Company filed counter stating that the accident occurred due to the negligent driving of the petitioner. The petitioner and his friend - Dhaya Sankar, were riding the Motorcycle while conversing without following the traffic rules. There was no negligence on the part of the first respondent's vehicle. Further, the first respondent did not possess any valid driving license and hence, the second respondent is not liable to pay any compensation to the petitioner. Accordingly, the second respondent-Insurance Company prayed to dismiss the Original Petition.

6.At trial, on the side of the petitioner, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.26 were marked. On the side of the second respondent, no evidence was let in. One Mr.Rupesh, Head Constable, attached to Coimbatore East Police Station Traffic Wing was examined as C.W.1 and Ex-X.1 was marked. Disability Certificate issued by the Medical Board was marked as Ex-C.1.

7.The Tribunal, after analysing the oral and documentary evidence adduced before it, came to the conclusion that the accident occurred due to the negligent act of the first respondent and since the first respondent's vehicle was insured with the second respondent, the second respondent – Insurance Company is liable to pay compensation to the petitioner and accordingly, awarded compensation as hereunder:

Sl.No.	Head	Amount
1	Loss of income due to Permanent Disability	Rs.22,64,700.00
2	Pain and Suffering	Rs.2,00,000.00
3	Extra Nourishment	Rs.20,000.00
4	Medical Expenses	Rs.6,14,951.00
5	Attender Charges	Rs.20,000.00
6	Damage to Clothes	Rs.1,000.00
	Total	**Rs.31,20,651.00**
	Rounded off	**Rs.31,20,650.00**

Further, the Tribunal held that since the first respondent did not possess valid license to drive the Car, the second respondent shall pay the Award amount to the petitioner and thereafter, recover the same from the first respondent.

8.Feeling aggrieved with the said award, the second respondent – Insurance Company has preferred the Civil Miscellaneous Appeal.

9.Dissatisfied with the Award amount, the petitioner has preferred Cross Objection praying to enhance the Award amount.

Arguments

10.The learned counsel for the appellant / second respondent-Insurance Company has argued that the Tribunal awarded a sum of Rs.22,64,700/- under the head 'loss of income due to permanent disability', which is incorrect; that the Tribunal has not appreciated Ex-C.1 Disability Certificate wherein the Medical Board has assessed the disability as 45% (permanent); that the petitioner is a Bank employee and the employer has already reimbursed a sum of Rs.9,04,830/- as his hospital and medical expenses; that due to his misconduct, he was dismissed from service on January 5, 2018; that the petitioner was provided salary from October 30, 2011 to December 14, 2011; and that in these circumstances, the Tribunal is not right in using the multiplier method and awarding compensation of Rs.22,64,700/- for the alleged permanent disability. Accordingly, learned counsel prayed to allow the Civil Miscellaneous Appeal.

11.Per contra, learned counsel for the Cross Objector / petitioner has submitted that due to the accident, the petitioner was not able to perform his duty effectively; that due to the accident, the petitioner was not able to join his work in the time period between March 3, 2012 and February 20, 2014; that the petitioner lost his salary for the said period; that due to the severity of the injuries, the petitioner is still taking treatment and that he has spent more than Rs.25,00,000/- towards medical expenses; that the petitioner is not able to sit and walk and he cannot carry out his day-to-day chores without the help of others; that an Attender is necessary for the petitioner to run his remaining days. Accordingly, the learned counsel prayed to allow the Cross Objection by enhancing compensation as Rs.75,00,000/-.

Point for consideration

12.The point that arises for consideration is whether the Tribunal is right in awarding compensation of Rs.31,20,650/- in favour of the petitioner.

Discussion and Decision

13.This Court has considered both side submissions.

14.The second respondent neither examined the first respondent nor any other person to substantiate its defence. On the other hand, an FIR was registered against the first respondent; charge sheet was filed; the first respondent appeared before the Judicial Magistrate Court and admitted his guilt and paid a fine for the offence under Sections 279 and 338 of The Indian Penal Code, 1860. From a conjoint reading of the evidence of P.W.1 and Ex-P.1 First Information Report, this Court is of the considered view that the petitioner has proved that the accident occurred due to the rash and negligent driving of the first respondent. Admittedly, the first respondent's vehicle bearing Registration No.TAR-5670 was insured with the second respondent and the insurance policy was in force on the date of the accident. Hence, the second respondent, as an insurer is liable to pay compensation to the petitioner.

15.After the accident, the petitioner was initially taken to Coimbatore Medical College Hospital, Coimbatore, wherein first-aid was administered and thereafter, he was admitted in Ganga Hospital, Coimbatore, as in-patient and took treatment for 115 days. Thereafter, the petitioner took treatment in Kuppusamy Naidu Hospital. In Ganga Hospital, the petitioner underwent a surgery for bone fracture. As per Ex-P.10 to Ex-P.16, the petitioner has spent a sum of Rs.15,19,781/- towards medical expenses including the cost of medicine and hospital expenses.

Out of the said sum of Rs.15,19,781/-, the petitioner has reimbursed a sum of Rs.9,04,830/-. Ex-P.23 reveals the fact that the petitioner need not repay the said amount to the Bank since the said expenses incurred under the Hospitalization Scheme. Hence, the petitioner is entitled to claim only the remaining amount of Rs.6,14,951/-.

16.Ex-P.23 reveals that after the accident, i.e., from October 31, 2011 to December 14, 2011, sick leave was granted to the petitioner with full pay. Then from December 15, 2011 to March 2, 2012, privilege leave was granted to the petitioner with full pay. From March 3, 2012 to February 20, 2014, the petitioner was on 'loss of pay' on medical grounds. Hence, the petitioner is entitled to claim loss of pay for the above period viz., March 3, 2012 to February 20, 2014 alone. Ex-P.23 reveals that the petitioner was unauthorisedly absent from February 21, 2014 till January 6, 2018 and he was dismissed from service on January 5, 2018. In short, Ex-P.23 would show that the petitioner was paid salary upto March 2, 2012. Petitioner (P.W.1) in his evidence has admitted the above said facts. He used to earn a sum of Rs.26,644/- per month as salary. Hence, for the time period between March 3, 2012 and February 20, 2014 he is entitled to a sum of Rs.6,39,456/- towards loss of income. Ex-C.1 Disability Certificate would show that the Doctor assessed permanent disability at 45%. Hence, this Court is of the view that a sum of Rs.4,000/- for each percentage of disability would be fair and reasonable.

17.Considering the nature of the injuries sustained by the petitioner, this Court is of the view that a sum of Rs.2,00,000/- would reasonable under the head 'pain and suffering'. Besides, the petitioner is entitled to attender charges of a sum of Rs.20,000/- and further, a sum of Rs.1,000/- towards clothes. Accordingly, the petitioner is entitled to compensation as under:

Sl.No.	Head	Amount
1	Loss of Income (24 months)	Rs.6,39,456.00
2	Permanent disability	Rs.1,80,000.00
3	Pain and Suffering	Rs.2,00,000.00
4	Medical expenses	Rs.6,14,951.00
5	Attender charges	Rs.20,000.00
6	Clothes	Rs.1,000.00
	Total	**Rs.16,55,407.00**
	Rounded off	**Rs.16,55,410.00**

18.Since the first respondent did not possess any valid license to drive the Car, the second respondent is directed to pay the Award amount to the petitioner. After paying the Award amount to the petitioner, the second respondent is entitled to recover the Award amount from the first respondent. It is clarified that the second respondent – Insurance Company is entitled to recover the Award amount from the first respondent by filing Execution Petition as if a decree is passed in M.C.O.P.No.231 of 2012 in favour of the second respondent and against the first respondent.

19.Considering the facts and circumstances of the case and since the Award passed by the Tribunal is on the higher side, the compensation awarded by the Tribunal is re-worked by this Court and the petitioner is entitled to a sum of **Rs.16,55,410/- (Rupees Sixteen Lakhs Fifty Five Thousand Four Hundred and Ten Only)** as tabulated above. Petitioner is entitled to interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Further, the petitioner is entitled proportionate costs and Advocate fees as per Rules. Since the first respondent did not possess a valid license to drive the Car, the second respondent is entitled to recover the same from the first respondent after making payment to the petitioner. For the aforesaid terms, a modified Award is passed in favour of the petitioner. The point that arises for consideration is answered accordingly partly in favour of the appellant–Insurance Company and partly in favour of the petitioner.

Conclusion

20.The appellant / Insurance company is directed to deposit the modified award amount of **Rs.16,55,410/- (Rupees Sixteen Lakhs Fifty Five Thousand Four Hundred and Ten Only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of MCOP No.231 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Gingee, less the amount, if any, already deposited, within a period of two months from the date of receipt of a copy of this judgment. After making payment to the petitioner, the appellant – Insurance Company is entitled to recover the Award amount from the first respondent as if a decree is passed in favour of the second respondent and against the first respondent.

21.In the result, the Civil Miscellaneous Appeal is partly allowed and the Cross Objection is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.] **[R.S.V., J.]**

05 / 07 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Motor Accident Claims Tribunal
(Sub Judge)
Gingee.

R.SUBRAMANIAN, J.
AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN

CMA NO.1631 OF 2022
AND CROSS OBJ. 87 OF 2022

05 / 07 / 2024