

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.2879 of 2007

R.P.Sundaralingam

... Appellant

Versus

1.B.Mahaveer  
(Set exparte before the Tribunal)

2.New India Assurance Co. Ltd.,  
No.1090, EVR Periyar Salai,  
A.R.Complex, Chennai - 600 084.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 25.01.2007 made in MACTOP.No.5030 of 2000 on the file of the Fast Track Court - I, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mrs.Saleem Fathima  
for Mr.M.Swamikannu

For Respondents : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and judgment passed in MCOF.No.5030 of 2000.

The brief facts that leads to filing of the Claim Application is as follows:-

2. On 30.10.2000, the petitioner was proceeding in the Tharamani Road from North to South direction, at that time, a motor cycle bearing registration No.TN-22-L-5315 came in a rash and negligent manner and hit against the petitioner, due to which the petitioner had sustained severe injuries and for the same, the petitioner had claimed a sum of Rs.12,16,000/- as

compensation before the Tribunal.

3. The 2<sup>nd</sup> respondent in the counter statement has denied the rash and negligent driving on the part of the 1<sup>st</sup> respondent and also denied the claim made under the various heads, stated that the 1<sup>st</sup> respondent would not be responsible for the accident. Other aspects regarding the injury, period of treatment and expenses were all denied by the respondents.

4. The Tribunal after analyzing the evidence and documents and other aspects regarding the accident, the Tribunal has fixed the negligence on the part of the 1<sup>st</sup> respondent and assessed the compensation at Rs.49,307/-. Aggrieved by the said award the claimant has preferred this appeal.

5. In the grounds of appeal, the appellant has stated that the Tribunal has not awarded any sum for loss of income during the treatment period. The sum awarded for transport to hospital and extra nourishment are also inadequate. It is also been stated that the Tribunal has awarded a lesser sum towards medical expenses and not awarded any sum towards pain and suffering and loss of income to the family members during the period of immobility of the appellant. The further grievance raised in the grounds of appeal is that no sum is awarded towards additional transport expenses. For the permanent disability and the loss of earning power, the Tribunal has awarded only Rs.30,000/- as a lumpsum against all those heads. Hence, on the whole the award of the Tribunal at Rs.49,307/- against the claim of Rs.12,16,000/- is disputed.

6. Heard Mrs.Saleem Fathima, learned counsel appearing for the appellant. There has been no representation for the respondents. Perused the documents available on record.

7. The appellant has argued that the claimant/ appellant was trying to cross the road from North to South, at that time, the 1<sup>st</sup> respondent's two-wheeler came in the East to West direction in a rash and negligent manner and hit against the claimant.

8. The Tribunal, on perusal of Ex.P1, FIR and charge sheet, has given a finding that the 1<sup>st</sup> respondent is responsible for the accident by his negligent driving. But it is observed that the date of accident is on 13.10.2000, whereas the complaint was preferred after a lapse of 8 days. Hence, the liability fixed on the 1<sup>st</sup> respondent is not very much disputed in the appeal. Only the quantum i.e., the sum awarded by the Tribunal is on very meager side and sums are not awarded under various heads according to the nature. On a perusal of the sum awarded, it is found that the Tribunal has awarded a sum of Rs.49,307/- under the following heads:

| Award towards        |   | Amount      |
|----------------------|---|-------------|
| For all disabilities | : | Rs.30,000/- |
| Pain and suffering   | : | Rs. 5,000/- |
| Medical bills        | : | Rs. 6,307/- |
| Extra nourishment    | : | Rs. 5,000/- |
| Transportation       | : | Rs. 3,000/- |
| Total                | : | Rs.49,307/- |

9. While determining the compensation amount, the claimant before the Tribunal has stated that he was running a business of selling old news papers and iron and he was earning Rs.10,000/- to Rs.12,000/- per month. After the accident, the claimant could not run the shop. The age of the petitioner has been stated as 40 years and it is the grievance of the claimant that now he is running his business by engaging people for wages..

10. It is also the argument advanced by the appellant that the claimant has sustained grievous injuries in the spinal cord and he is suffering functional disability at the maximum. Since his business is selling the old papers and iron, which needs good health and good condition of the body and now he lost the capacity to do any work on his own. It is also the argument made by the appellant that after the accident, he find it inconvenient to lift any heavy objects and he is not in a position to drive two-wheeler.

11. On the side of the claimant Dr.Saichandran who examined as PW3 has deposed before the Court that the claimant's fifth spine is bent and because of that, the claimant is unable to sit and do any work by bending his back and he is also suffering from severe back pain and hence he assessed the disability at 35%.

12.It is the argument of the appellant that when the petitioner sustained 35% disability and his entire occupation and health has been very much affected because of the disability, the sum awarded by the tribunal under the head 'for all disabilities' at Rs.30,000/- is not at all a reasonable one, hence, it is to be properly considered and the sums awarded under other heads are also argued by the appellant to be very meager.

13. It is to be observed that though the claimant has stated

that he has incurred Rs.60,000/- for medical expenses, he has not produced any documents to prove the same. It is also seen from the award of the Tribunal that no sum has been awarded for medical expenses, which needs to be considered. The appellant/claimant has filed a discharge summary and the disability certificate stating that the permanent disability is at 35% issued by the Doctor, PW3. The petitioner would have incurred medical expenses but that has not been considered by the Tribunal.

14. Hence, as per the arguments of the appellant regarding the nature of the injury and also the sum awarded under various heads are not reasonable, when there was a heavy expenses incurred by the claimant and also the disability resulted in the loss of income that was also not properly considered. Hence, the award of the Tribunal is enhanced by the Court is as follows:-`

15. The Tribunal has awarded Rs.30,000/- under the head 'for all disabilities'. This Court inclined to take Rs.2,000/- per percentage calculated as Rs.70,000/- [35 x 2000]. It is also observed that the claimant was admitted on 30.10.2000 as an in-patient and he was under treatment for four days, due to which, he would have incurred certain sum towards attendant charges. The Tribunal has not considered the same. Hence, a sum of Rs.2,000/- is awarded towards 'Attendant charges' and also enhanced the sum under the head pain and suffering to Rs.10,000/-. Accordingly, this Court modifies the award passed by the Tribunal by enhancing the sum under the heads as follows:

| Award towards        |   | Amount      |
|----------------------|---|-------------|
| For all disabilities | : | Rs.70,000/- |
| Pain and suffering   | : | Rs.10,000/- |
| Medical bills        | : | Rs. 6,307/- |
| Extra nourishment    | : | Rs. 5,000/- |
| Transportation       | : | Rs. 3,000/- |
| Attender charges     | : | Rs. 2,000/- |
| Total                | : | Rs.96,307/- |

16. In fine, this Civil Miscellaneous Appeal is partly allowed. No costs. The award amount is enhanced to Rs.96,307/-. The 2<sup>nd</sup> respondent/ Insurance Company is directed to deposit the entire enhanced amount along with interest awarded by the Tribunal within a period of four weeks from the date of receipt of a copy of the order. On such deposit is being made, the Tribunal is directed to transfer the same directly to the bank

account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Fast Track Court - I,  
Motor Accident Claims Tribunal,  
Chennai.

2. The Section Officer,  
V.R. Section,  
High Court,  
Madras - 104. (2Copies)

+1cc to Mr.M.Swamikkannu, Advocate, S.R.No.70885

C.M.A. No.2879 of 2007

RJI (CO)  
GSP (29/01/2019)



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