

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30.10.2018

JUDGMENT PRONOUNCED ON : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1277 of 2011

P.Velu ... Appellant / Petitioner

Vs

1. S.Ravi (R1 was set exparte in
the trial Court)

2. The New India Assurance Co.Ltd.,
Ratna Building, No.231, TTK Road,
Alwarpet, Chennai 600 018. ... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.04.2009 made in MACT.O.P.No.1060 of 2007 on the file of the learned II Judge, Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr. P.Arundaltan for
C and K Law Firm

For Respondents : No appearance

J U D G M E N T

Aggrieved over the award dated 03.04.2009, passed in M.C.O.P.No.1060 of 2007 on the file of the Motor Accident Claims Tribunal (II Judge, Small Cases, Chennai), the appellant who is the claimant filed this Civil Miscellaneous Appeal seeking the relief of enhancing the compensation awarded by the Claims Tribunal.

2. For the sake of convenience herein after, the parties are referred to as per the litigative status in the Claims Tribunal.

The case of the claimant in brief is as follows:

3. On 28.05.2006 at about 11.00 hours when the petitioner was walking in Muvarasampet Main Road near Uzhaippalar Nagar, the motor cycle bearing registration No. TN 22 AL 2003 came from opposite direction in a rash and negligent manner without following traffic rules and regulations and dashed against the petitioner. Due to the said accident, the petitioner suffered greivous injuries all over the body. The accident had occurred only due to the rash and negligent act of the rider of the Motor Cycle.

4. The Claimant filed a claim application before the Claims Tribunal under Section 166 of Motor Vehicle Act, in which, he was claiming compensation of Rs.3,00,000/- for the injuries sustained by him. Being the owner of the motor cycle the 1st respondent and the 2nd respondent who is the insurer are jointly and severally liable to pay the compensation. The Claims Tribunal, after elaborate enquiry, determined Rs.99,500/- as a total compensation and directed the 2nd respondent to pay the same to the claimant. Aggrieved over the compensation arrived by the claims Tribunal, the appellant is before this Court with this appeal.

5. Before the Claims Tribunal, the first respondent remained ex parte.

6. On the other hand, opposing the Claim of the claimant, the 2nd respondent by filing the counter denied the accident itself. The delay of more than 10 months in registering the First Information Report, shows the malicious intention of the claimant to make a fortune out of the alleged accident. The petitioner should prove that the offending vehicle is having a valid insurance policy. The petitioner being a pedestrian should have used the pavement for walking. But, he was not road conscious and walking in the middle of the road at the time of an accident. The age, avocation and income of the petitioner are denied. According to the 2nd respondent, the accident had occurred only due to the rash and negligent act of the claimant.

7. Before the Claims Tribunal, the claimant examined himself as P.W.1 and the Doctor who issued the disability certificate to P.W.1 has examined as P.W.2. On the side of the claimant, 10 documents were marked as Ex.P1 to Ex.P10. However, on the side of the respondents none have been examined and no documents were produced. After completing the enquiry, the Claims Tribunal has held that the accident had happened, only due to the rash and negligent act of the rider of the 1st respondent motor cycle and both the 1st and 2nd respondent are jointly and severally liable to pay the compensation.

8. During the time of enquiry in this appeal, even after printing the name of the respondent in the cause list, nobody was appeared and represented the case of the respondent. So, it is necessary to dispose this Civil Miscellaneous Appeal, based on the arguments advanced on the side of the claimant, as well as by going through the relevant documents already filed in the Claims Tribunal at the time of trial. In respect to the negligent aspect, in the affidavit filed by P.W.1., he deposed that on 28.05.2006 at about 11.00 hours, when he was walking in the Muvarasampet Main Road near Uzhaippalar Nagar, the motor cycle which belongs to the 1st respondent bearing registration No. TN 22 AL 2003 came from opposite direction, in a rash and negligent manner and hit against him. In order to corroborate the said evidence, he had produced the copy of the First Information Report. Subsequent to that, in order to dispute the genuineness of the said First Information Report and also for disputing the averments made in the said document, nobody has been examined on the side of the respondent, particularly the owner of the motor cycle has not been examined as respondent side evidence. Moreover, on go through the cross examination of P.W.1, the case of the respondent was totally denied by the petitioner. In the said circumstances, we cannot come to the conclusion that the averment made in the counter filed by the 2nd respondent is a true one. The Claims Tribunal also held due to the non-production of the rebuttal evidence, the evidence given by the petitioner with regard to the rash and negligent act of the driver of the motor vehicle is sustainable one. Accordingly, this Court affirmed the views arrived at by the Claims Tribunal, in respect to the rash and negligent aspect.

9. In respect to the liability, it is the case of the claimant that, since the 2nd respondent is the insurer of the said vehicle, both the respondents are jointly and severally liable to pay the compensation. In order to dispute the liability on the side of the respondent, nobody have been examined. Accordingly the above findings of the Claims Tribunal also affirmed by this Court.

10. Coming to the point of quantum of compensation, as per the evidence given by P.W.1, he was working as a Stone mason and earned Rs.200/- per day. The said evidence is not proved through the relevant document. But, the Claims Tribunal fixed the monthly income of the petitioner as Rs.4,500/- per month. Since the accident had happened in the year of 2006 fixing the monthly income as Rs.4,500/- does not need any interference.

11. In respect to the disability sustained by the claimant, P.W.2 Doctor has stated that the petitioner sustained 65% of partial and permanent disability. According to the proof of affidavit filed by P.W.2, the claimant sustained only one

fracture on his forehead. Otherwise, in order to prove the injuries on his eyes. P.W.2 is not a competent person for deposing about the injuries found on his eyes.

12. In this aspect, the Claims Tribunal reduces the percentage of disability to the tune of 50% and awarded Rs.50,000/- as a compensation under the head of permanent partial disability. Since, the accident had happened in the year of 2006, this Court decided it would appropriate to allow Rs.1,500/- per percentage as compensation to the permanent partial disability. Accordingly, under the head of disability, the petitioner is entitled to Rs.75,000 as a compensation. Further, the Claims Tribunal awarded Rs.25,000/- for pain and suffering.

13. With regard to the other conventional heads, in the Claims Tribunal Rs.1,000/- was allowed under the head of Transportation to Hospital, Rs.5,000/- was allowed under the head of extra nourishment. Rs.1,000/- each was allowed towards damages to clothing and medical expenses, Rs.3,000/- was allowed under the head of attender charges. Moreover, Rs.13,500/- was allowed under the head of loss of earnings. Now considering the quantum fixed by the claim tribunal under the various heads is not on the higher side. So the amounts awarded under the conventional heads are unaltered. As discussed above, the compensation awarded by the Tribunal is enhanced to Rs.1,24,500/- as detailed below.

SL.No	PARTICULARS	Awarded by the Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	AMOUNT (IN.RS)
1.	Towards Partial and permanent disability	50,000.00	75,000.00
2.	Towards Pain and Sufferings and Mental Agony	25,000.00	25,000.00
3.	Towards Transport to Hospital	1,000.00	1,000.00
4.	Towards Extra Nourishment	5,000.00	5,000.00
5.	Towards Damages to Clothing	1,000.00	1,000.00
6.	Towards Medical Expenses	1,000.00	1,000.00
7.	Towards Attender Charges	3,000.00	3,000.00
8.	Towards Loss of Earnings	13,500.00	13,500.00
Total		99,500.00	1,24,500.00

14. Accordingly, the compensation arrived at by the Claim Tribunal is enhanced to Rs.1,24,500/-. The rate of interest awarded by the Tribunal at 9.5% per annum is reduced to 7.5% per annum. The Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, if any within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, if any the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

15. In the result, the Civil Miscellaneous appeal is partly allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sbn

To

- 1) The II Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.
- 2) The Section Officer,
VR Section,
High Court, Madras.

+1 cc to M/s.C.Munusamy, Advocate, S.R.No.86424

Civil Miscellaneous Appeal No.1277 of 2011

SKV(CO)
SSM(03/05/2019).

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