

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.09.2018
Pronounced on	12.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.1371 of 2011

N.Janarthanan

..Appellant/Claimant

Vs

1. J.Venkatraman

2. National Insurance Co. Ltd.,
751, Mount Road, Chennai-2

..Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.09.2008 made in M.C.O.P.No. 2713 of 2005 on the file of the Motor Accident Claims Tribunal/(III Judge, Court of Small Causes), Chennai.

For Appellant : Ms. Ramya V.Rao
For 1st Respondent : Notice served
For 2nd Respondent : Mrs. N.B.Surekha

J U D G M E N T

Aggrieved over the award dated 26.09.2008 passed by the Motor Accidents Claims Tribunal, Chennai, in M.C.O.P.No. 2713 of 2005, the appellant herein, who is the claimant, in the claim petition filed this appeal, in which, he is seeking the relief to enhance the compensation amount determined by the Claims Tribunal. In the Claims Tribunal, the appellant had filed a claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T, in which, he claimed a compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident occurred on 27.12.2004. The Respondents 1 and 2 herein are the owner and insurer of the offending vehicle respectively. After elaborate enquiry, the Claims Tribunal awarded a total compensation of Rs.1,97,213/- along with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

In the Claims Tribunal, the case of the appellant is as follows:

2. On 27.12.2004 at about 10.00 a.m., when the appellant was proceeding from Pallikaranai to Medvakkam in his motor-cycle bearing Registration No.TN 21 Z 7098 at Pallikaranai, near GMT Company a Maruti Omni van owned by the 1st respondent, bearing Registration No.TN 22 AC 7389 proceeding from Medavakkam was driven by its driver in a rash and negligent manner and dashed against the petitioner's motorcycle and caused the accident. The accident had occurred only due to the rash and negligent act of the van driver. In the accident, the petitioner sustained severe injuries and fractures all over the body. Hence, for the said injuries sustained by him, he filed an application and claiming a compensation of Rs.5,00,000/- with interest and costs.

3. On the other hand, opposing the claim made by the claimant, the 2nd respondent Insurance Company filed a counter. In the Counter, he denied the liability and stated only due to the rash and negligent act of the appellant, the accident had occurred. According to him, the appellant, at the time of accident, crossed the road without following the traffic rules and invited the accident, the income of the petitioner is highly imaginary one. In any event, the compensation claimed by the claimant is highly excessive and exaggerated. Thus, the 2nd respondent sought for dismissal of claim petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1, the Doctors who issued a disability certificate under Ex.P7 and Ex.P9 were examined as PW2 and PW3. Further, on the side of the petitioner, 10 documents were marked as Ex.P1 to Ex.P10. On the side of the respondents, none of the witnesses have been examined and no documents have been marked.

5. The 1st respondent remained ex-parte.

6. In the Claims Tribunal, on the basis of the available records, the learned III Judge, Small Causes Court, Chennai found that the 1st respondent van driver alone caused the accident and passed award for a sum of Rs.1,97,213/- as a total compensation for the injuries sustained by the claimant. Further, the Tribunal directed the 2nd respondent to pay the compensation. Aggrieved over the said finding, the claimant has come forward with the present appeal.

7. During the time of enquiry, the learned Counsel appearing for the appellant vehemently argued that the Claims Tribunal without considering the evidence adduced by the PW2 and PW3, reduced the percentage of disability and awarded

Rs.1,00,000/- under the head of disability as a compensation. Further, he submits that the amount awarded under the various heads is very meager. Therefore, he prayed to enhance the compensation.

8. Per contra, the learned Counsel appearing for the 2nd respondent would contend that the Tribunal after analysing various authorities, had correctly fixed the compensation of Rs.1,00,000/- for the disability sustained by the petitioner. According to him, the compensation fixed by the Claim Tribunal does not need any interference.

9. Now, on going through the findings arrived by the Claims Tribunal, it has held that during the time of accident, a Maruti Omni van came in a rash and negligent manner and hit against the Two-wheeler, in which the claimant was travelled. In order to prove the same, before the Claims Tribunal, the petitioner examined himself as PW1 and he deposed about the rash and negligent act of the Omni Van driver. In order to substantiate the evidence, on the side of the claimant, the copy of the FIR which was registered by Pallikaranai P.S in Crime No.637 of 2004 has been marked as Ex.P6. No doubt, the contents of the FIR clearly corroborated the evidence given by the PW1. In otherwise, in order to dispute the evidence given by the PW1 particularly in respect of negligent aspect, on the part of the 1st respondent, nobody have been examined. So, the Claims Tribunal arrived a conclusion that the alleged accident had occurred only due to the rash and negligent driving of the van driver. This Court affirmed the view of the Claims Tribunal held as above. Therefore, being the owner and the insurer of the offending vehicle, both the respondents are jointly and severally liable to pay the compensation.

10. In respect of the quantum, the Claims Tribunal awarded Rs.1,00,000/- under the head of permanent disability. In this regard, before the Claims Tribunal, in order to prove the disability sustained by the PW1, two Doctors have been examined as PW2 and PW3. The Dentist, Dr. T.S.Kalkura has stated that due to the fracture found in the lower jaw, now the petitioner is facing difficulty in eating the food. Further, he has stated that the face of the petitioner is also disfigured. According to him, the appellant sustained 25% partial permanent disability. Further, one Dr.K.J.Mathiazhagan has stated that for the fracture sustained in the face, a surgery was performed and thereafter, the mouth of the appellant has not been opened as usual. Further, he has stated that now the appellant sustained pain in his hip. Eventhough in his chief examination, he has stated that the appellant sustained injuries in his hip, in his cross examination, he has specifically stated that there is no fracture found in the hip. Therefore,

as per the evidence of two Doctors, it has been stated that the appellant sustained 75% of partial permanent disability.

11. In this regard, the Claims Tribunal, thoroughly analysing the evidence of PW2 came to a conclusion that the petitioner sustained only 50% disability and awarded Rs.1,00,000/-. Since the appellant is not having any fracture in the hip, it cannot be said that the evidence given by PW3 is sufficient to hold that the claimant suffered 50% disability through the injury sustained in the hip. Moreover, both the Doctors had not given any treatment to the appellant after the occurrence. They have examined the appellant after a long gap, particularly, after three years from the date of accident. Further, in the Claims Tribunal, the discharge summary issued to the appellant has been marked as Ex.B1. Now, on going through the said document, he was admitted in the hospital on 27.12.2004 and thereafter, discharged on 05.01.2005, thereby, he was admitted as inpatient nearly for one week. In the wound certificate, it has been stated that the petitioner has sustained fracture in the mandible bone. Further, he sustained injury in the hip. Accordingly, as per the endorsement made in the discharge summary, I find there is no error found in the findings of the Claims Tribunal in respect of fixing the disability. This Court affirmed the view taken by the Claims Tribunal and concluded that the appellant sustained 50% partial permanent disability in the accident. For the said disability, the Claims Tribunal awarded Rs.1,00,000/-. In the evidence adduced by the claimant, he claims that he was working as painter and at the time of accident, he was earning Rs.6000/- per month. So, considering the nature of work performed by the appellant, the disability sustained by him is no way affected the work already performed by him. So, the award determined by the Tribunal at Rs.1,00,000/- for the disability sustained by the appellant is found correct. In respect of other heads, due to the injuries sustained in the accident, the petitioner was disabled from attending his job for a period of nearly six months. But, the Claims Tribunal has calculated the period as four months and awarded Rs.12,000/- under the head of loss of earning. So, the said amount is modified as Rs.18,000/-. In the Claims Tribunal, the petitioner was awarded Rs.2,000/- each under the head of transportation and extra nourishment. No doubt, the said amount is necessarily to be enhanced and Rs.7,500/- each is fixed for the above heads. Further, for the damage of motorcycle, Rs.5000/- is enhanced as against Rs.3000/- and as per the medical bills Ex.P4 and Ex.P5, the petitioner is entitled to a sum of Rs.26,213/- rounded off to Rs.26,500/- as compensation under the head of medical expenses. Further, a sum of Rs.31,000/- awarded under the head of pain and sufferings is reduced to Rs.25,000/-. Moreover, this Court is decided to award Rs.5,000/- each for future treatment and for attender

charges. Accordingly, the amount of compensation awarded by the Tribunal is modified as follows:

Head	Amount (Rs.)
Loss of Earnings	18,000/-
Transportation	7,500/-
Extra Nourishment	7,500/-
Damages to motor cycle	5,000/-
Medical Expenses	26,213/- (rounded off to 26,500/-)
50% Partial Permanent disability	1,00,000/-
Pain and Sufferings	25,000/-
Loss of amenities	10,000/-
Future treatment	5,000/-
Attender Charges	5,000/-
Total	2,09,500/- (rounded off to 2,10,000/-)

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

13. Accordingly, the award of the Tribunal at Rs.1,97,213/- is enhanced to Rs.2,10,000/-. The 2nd respondent 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 this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the claimant through RTGS/NEFT with-in a period of one week after collecting the Court fee for the enhanced compensation. The said amount shall carry the same rate of interest as awarded by the Tribunal viz., 7.5% per annum.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

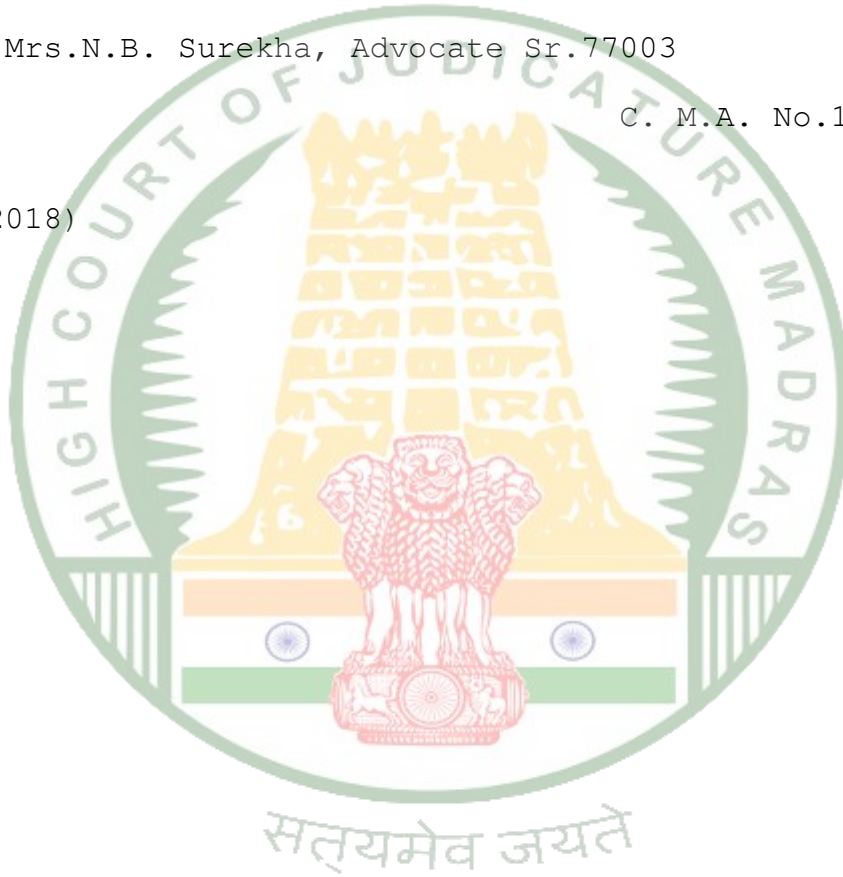
1.The Motor Accident Claims Tribunal/
(III Judge, Court of Small Causes),
Chennai.

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

+1 cc to Mrs.N.B. Surekha, Advocate Sr.77003

C. M.A. No.1371 of 2011

KJI (CO)
EU(04/12/2018)



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