

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 26.11.2018

DELIVERED ON 07.12.2018

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.1470 OF 2011

Madhu @ Madheswaran Appellant/Petitioner

Vs.

1. G.Saravanan

2. C.Somasundaram

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against order dated 06.08.2010 passed in M.C.O.P.No.138 of 2009 by the Additional District Judge, Motor Vehicle Accidents Claims Tribunal, Fast Track Court No.4, Bavani, Erode District.

For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.N.Manokaran

J U D G M E N T

The appellant is the claimant in MCOP No.138 of 2009 on the file of the Additional District Judge, Fast Track Court No.4, Motor Vehicle Accidents Claim Tribunal, Bavani, Erode District.

2.The appellant has filed the above claim petition under Section 166 of the Motor Vehicles Act for the injuries sustained by him in a road accident, that took place on 03.01.2009, at about 5.30 p.m., when he was travelling as a pillion rider in a motor cycle bearing registration No. TN 33 AM 1114, belonging to the first respondent, near Chinnapallam on Bavani-Mettur Main road. According to the claimant, the first respondent drove the above motor cycle rashly and negligently and hit a lorry from behind, as a result of which, the claimant sustained injuries.

3.Copies of the First information Report (Ex.P1), rough sketch (Ex.P6), observation mahazar (Ex.P5), Report of Motor

Vehicle Inspector (Ex.P7) show that the rash and negligent driving of the first respondent was the cause of the accident. However, the trial court relying on an undertaking (Ex.R1) allegedly given by the claimant, dismissed the entire claim petition.

4.The two wheeler owned by the first respondent was not insured for third party liability. In the undertaking (Ex.R1), it is stated that the first respondent had settled him a sum of Rs.28,000/-. The claimant has denied the execution of the said undertaking letter (Ex.R1). Since Pw1 during the course of cross examination has admitted Ex.R1, the tribunal dismissed the claim petition. Even assuming that the claimant has executed Ex.R1, the sum of Rs.28,000/- cannot be considered as a just compensation for the injuries sustained by him. More over, the said Ex.R1 dated 28.11.2009 was executed during the pendency of the present claim petition in MCOP No.138 of 2009 and no leave was obtained from the tribunal to enter into any compromise between the parties in respect of the settlement.

5.The tribunal was also wrong in holding that the first respondent was not responsible for the accident and that the driver of a lorry, drove his lorry rashly and negligently and hit the two wheeler ridden by the first respondent merely based on the version of the claimant in Ex.R1. The tribunal has failed to consider the investigation done by the police and also the final report filed against the first respondent. At the most, the first respondent can only deduct Rs.28,000/- from the award amount.

6.As regards the quantum of compensation is concerned, discharge summary (Ex.A12) shows that the appellant/claimant has sustained a fracture of both bones of his right leg. Dr.V.Thirunavukkarasu, Shri Vijaiah Trauma Care Hospital has clearly indicated that the bones were malunited. Dr.Thambiraj (P.W.2) has assessed the partial permanent disability as 60%.

7.It is contended by the appellant/claimant that he was a barber by profession and was earning a sum of Rs.3,000/- per month. It is also his contention that on account of the accident he is unable to continue his profession as barber. The medical records show that the appellant/claimant has sustained a fracture of his right leg and it cannot be said that the appellant is unable to continue his profession as a barber. Since there is no functional disability, multiplier method is not warranted as far as the present case is concerned.

8.Though, Dr.Thambiraj (P.W.2) has assessed the partial permanent disability as 60%, no working sheet was attached to permanent disability certificate (Ex.A13). In the facts and circumstances, the partial permanent disability is fixed at 30%

considering the nature of injury sustained by the appellant/claimant. As the accident took place in the year 2009, a sum of Rs.3,000/- can be awarded per percentage and thus the appellant/claimant is entitled to a sum of Rs.90,000/- (30% x 3000) towards loss of earning capacity. Apart from this amount, he is entitled to a sum of Rs.10,000/-, Rs.5,000/-, Rs.5,000/- and Rs.1,000/- towards pain and sufferings, extra nourishment, transportation and loss of articles respectively. On account of the accident, the appellant/claimant would not have been in a position to continue his work at least for three months and therefore, a sum of Rs.9,000/- is awarded towards loss of income. The award passed under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income (for 3 months)	3,000 x 3 = Rs.9,000/-
2.	Partial Permanent Disability	Rs.90,000/-
3.	Transportation	Rs.5,000/-
4.	Extra Nourishment	Rs.5,000/-
5.	Pain and sufferings	Rs.10,000/-
6.	Loss of articles	Rs.1,000/-
7.	Loss of amenities	Rs.10,000/-
Total		Rs.1,30,000/-

9. Since as per Ex.R1, the appellant/claimant had already received a sum of Rs.28,000/- from the respondents, the said amount should be deducted. Thus the appellant/claimant is entitled to a compensation of Rs.1,02,000/- together with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of deposit.

10. In the result,

(i) The appeal is allowed. No costs.

(ii) The appellant/claimant is entitled to a compensation of Rs.1,02,000/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/claimant is directed to pay court fee if any for the compensation amount and the Registry is directed to draft the decree, after receipt of the balance court fee.

(iv) The respondents are directed to deposit the compensation amount of Rs.1,02,000/- with accrued interest

within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the respondents, the appellant/claimant is entitled to withdraw the same immediately.

Sd/-
Assistant Registrar

//True Copy//

To Sub Assistant Registrar

1. The Additional District Judge,
Motor Vehicle Accidents Claims Tribunal,
Fast Track Court No.4,
Bavani, Erode District.

+1cc to Mr.C.Kulanthaivel, Advocate sr.84629

+1cc to Mr.N.Manoharan, Advocate sr.84771

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