

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1287 of 2018
and
CMP.No.10295 of 2018

The Oriental Insurance Company Ltd.,
Motor Third Party Hub,
No.115, Broadway, II Floor,
Chennai-1.

Appellant/2nd respondent

...vs...

1.Mannangatti

1st Respondent/Petitioner

2.K.M.Babu

2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 03.03.2018 made in MCOP.No.3467 of 2016 on the file of the Motor Accident Claims Tribunal/(Special Sub Court No.2/Court of Small Causes), Chennai.

For Appellant

: Mr.D.Bhaskaran

Respondents

: Mr.M.Pachaiyappan for R-1

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 03.03.2018 made in MCOP.No.3467 of 2016 on the file of the Motor Accident Claims Tribunal/(Special Court No.2/Court of Small Causes), Chennai, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

2. By both side consent, this appeal is disposed of at the time of admission stage itself.

3.For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

4.The case of the petitioner is that on 19.02.2016 at about 17.30 hours, while the petitioner was walking along the road at Palayam Junction, Kozhikode, Kerala, the Autorikshaw bearing Registration No.KL-11-AQ-1867 came at high speed, in a rash and

negligent manner, dashed against the petitioner causing him multiple grievous injuries. Due to the accident, the petitioner suffered fracture of Neck of Femur left side and multiple injuries all over the body. The accident occurred due to the negligence of the driver of the Autorikshaw bearing Registration No.KL-11-Q-1867 belongs to the first respondent and insured with the second respondent. The petitioner who was aged 55 years, by working as coolie was earning Rs.800/- per day. Due to the injury suffered, he is unable to carry on his avocation resulting in loss of income to him. Thus, the petitioner sought for a sum of Rs.20,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

5. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about his age, avocation and income is disputed. The place, date and time of the accident is to be proved by the petitioner. The claim of the petitioner about suffering fracture of neck femur left side and other injuries is denied. The amount claimed by the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioner examined himself as P.W.1 and medical expert as P.W.2, produced documents Ex.P1 to Ex.P9 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent Autorikshaw driver only caused the accident, passed an award for a sum of Rs.3,94,860/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

8. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

9. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the evidence of P.W.2 Doctor is not based on records and therefore the Tribunal ought to have dis-regarded the evidence of P.W.2. The fact that P.W.2 Doctor has not given treatment to the petitioner and issued disability certificate alone without any working sheet was not considered by the Tribunal properly. The Tribunal without any necessity adopted multiplier method of calculation. The petitioner has suffered only physical disability and does not suffer from only functional disability. The amount provided

under different heads is highly excessive. The appellant/2nd respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

10.Per contra, the learned counsel appearing for the petitioner/claimant contends that having suffered fracture of the neck femur and injuries all over the body, the disability suffered by the petitioner was correctly assessed by the Tribunal, which passed just and reasonable Award. The Award passed by the Tribunal is based on proper appreciation of the evidence and no ground is made out by the 2nd respondent/appellant to interfere with the same. Thus, the petitioner/claimant sought for dismissal of the appeal.

11.It is only quantum appeal. Both side did not contest the finding of the Tribunal fixing the negligence on the first respondent auto driver for causing the accident. The petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The police also registered Ex.P1 First Information Report against the first respondent Auto driver only. There is no contra evidence let in by the respondents. As such, on the basis of P.W.1 evidence and the contents of Ex.P1 First Information Report, the Tribunal correctly concluded that the rash and negligent driving of the driver of the first respondent Auto bearing Registration No.KL-11-Q-1867 alone caused the accident.

12.The fact that the above said Auto belongs to the first respondent and insured with the second respondent is not disputed. In fact, the second respondent has filed Petition under Section 170 of the Motor Vehicle Act. Therefore, it is clear that the offending vehicle was insured with the second respondent Insurance Company. Thus, both the respondents are liable to pay compensation to the petitioner.

13.The injured petitioner who deposed as P.W.1 clearly stated about the injuries suffered by him. After the occurrence, he underwent treatment in Kerala Medical Collage Hospital, Kozhikode from 19.02.2016 to 24.02.2016 and the discharge summary for the same is produced as Ex.P2. The petitioner also took treatment as inpatient in Government Hospital, Chennai from 25.02.2016 to 26.03.2016 as inpatient and to prove the same, produced Ex.P3 discharge summary issued by the said hospital. As stated earlier, the petitioner has suffered fracture of neck femur. He has also suffered loss of eye sight and the same will naturally affect his functional ability. Therefore, it is clear that the petitioner has suffered partial permanent disability.

14.The petitioner examined P.W.2 Doctor who assessed the disability suffered by the petitioner and issued Ex.P9

disability certificate, stating that there was 40% partial permanent disability. The X-ray taken by P.W.2 is marked as Ex.P8. In Ex.P9 disability certificate, it is stated that the petitioner has pain and stiffness in left hip and the movement is restricted. It is further stated that the petitioner was find difficulty in walking/climbing steps/sitting cross legged/squatting. Thus, it is clear from the evidence of P.W.2 Doctor that the petitioner has suffered partial permanent disability. The said Doctor fixed the disability of the petitioner at 40%. Admittedly, P.W.2 did not give treatment to the petitioner and he has not enclosed any calculation sheet with Ex.P9 disability certificate. Therefore, the Tribunal is justified in fixing the disability at 30%. The petitioner claims that he was earning Rs.800/- per day by working as coolie. However, there is no proof for the same. Considering the avocation pleaded by the petitioner, his monthly income is fixed at Rs.6,500/-. As he was aged 56 years, it will be appropriate to add 10% of the income towards future prospects and the multiplier to be applied is 9. Thus, the loss of earning capacity is calculated as follows:-

$$\text{Rs.6,500/-} + 10\% \text{ Rs.650/-} = \text{Rs.7,150/-} \times 12 = 85,800/- \times 9$$
$$= \text{Rs.7,72,200/-} \times 30\% = \text{Rs.2,31,660/-}.$$

15. Considering the nature of injuries suffered by the petitioner, he could not have attended to his normal work at least for a period of four months. Thus, the loss of income during treatment period is calculated as follows. $\text{Rs.6,500/} \times 4 = \text{Rs.26,000/-}.$

16. The petitioner having suffered fracture and underwent treatment as inpatient would have suffered from pain and sufferings, for the same Rs.30,000/- is provided. Considering the fracture and other injuries suffered by the petitioner, he would have needed assistance of an attender during treatment period. As such, a sum of Rs.10,000/- is provided towards attender charges. The sum of Rs.5,000/- provided towards Transportation charges and Rs.20,000/- provided towards Extra-nourishment by the Tribunal is hereby confirmed. The Tribunal has not provided any amount towards damage to cloths. As such, a sum of Rs.4,000/- is provided towards damage to cloths. Considering the above said amount provided under different heads, there is no need or necessity to provide for disability compensation at percentage basis as done by the Tribunal. Therefore, the sum of Rs.90,000/- provided by the Tribunal towards disability compensation is hereby set aside. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning capacity	2,31,660.00	2,31,660.00
2.	Permanent Disability	90,000.00	-
3.	Pain and sufferings	30,000.00	30,000.00
4.	Loss of income during treatment period	18,200.00	26,000.00
5.	Transport to Hospital	5,000.00	10,000.00
6.	Extra-nourishment	20,000.00	20,000.00
7.	Attender charges	-	10,000.00
8.	Damage to cloths	-	4,000.00
	Total	3,94,860.00	3,31,660.00

Accordingly, a sum of Rs.3,94,860/- Awarded by the Tribunal is modified and the same is reduced to Rs.3,31,660/-.

17. In the result, this appeal is partly allowed. No costs. The amount of Rs.3,94,860/- awarded by the Tribunal dated 03.03.2018 made in MCOP.No.3467 of 2016 on the file of the Motor Accident Claims Tribunal/(Special Court No.2/Court of Small Causes), Chennai is reduced to Rs.3,31,660/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.3,31,600/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. The Appellant-Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Sub Judge- 2,
Small Causes Court,
The Motor Accident Claims Tribunal,
Chennai.

+1cc to Mr.D.Bhaskaran, Advocate sr.no.41210

C.M.A.No.1287 of 2018

nr 27/08/2018



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