

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01.11.2018

JUDGMENT PRONOUNCED ON : 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.1791 of 2011

D.Arvind Prasad .. Appellant / Petitioner

versus

1.Larsen & Toubro Ltd.,
ECC Division,
Mount Poonamallee Road,
Post Box No.979,
Manapakkam, Chennai - 600 089.

2.Iffco-Tokio General Insurance Co. Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai - 600 017.

..

Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.01.2010 passed in M.A.C.T.O.P.No.3314 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge [Fast Track Court No.III], Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondent No.1 : Exparte

For Respondent No.2 : Ms.K.Saraswathi

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant [petitioner], challenging the judgment and decree dated 30.01.2010 passed in M.A.C.T.O.P.No.3314 of 2005 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge [Fast Track Court No.III], Chennai.

2. For the sake of convenience, the parties are referred to herein, as per their litigative status before the

Tribunal. It is a case of injury. The case of the petitioner is that, on 12.06.2005 at about 18.15 hours, while the petitioner was riding his two-wheeler bearing Registration No.TN-02-T-3640 carefully and cautiously in 6th Avenue Road, Anna Nagar, Chennai, from west to east, a Santro Car bearing Registration No.TN-10-B-2566 owned by the first respondent and insured with the second respondent, driven by its driver, came in a rash and negligent manner from opposite direction on the wrong side of the said road and dashed against the two-wheeler, due to which, the petitioner sustained grievous injuries. For the injuries sustained by the petitioner, the first respondent being the owner and the second respondent being the insurer of the Car are liable for payment of compensation vicariously and statutorily to the petitioner. For the said occurrence, a case has been registered by the Sub-Inspector of Police, Traffic Investigation, V-5 Thirumangalam Police Station in Crime No.214/TM1/05.

3. On the other hand, opposing the claim of the petitioner, by filing counter, the second respondent [Insurance Company] denied the accident itself and stated that only due to the rash and negligent driving of the injured, the accident occurred, further at the time of accident, the driver of the Santra Car drove the vehicle by observing the rules and regulations. The age, avocation and income are denied. The claim of the petitioner is exorbitant and thus, the second respondent sought for dismissal of the claim petition.

4. Before the Claims Tribunal, the petitioner examined himself as P.W.1. Further, the Doctor, who issued the Disability Certificate to the petitioner [claimant] was examined as P.W.2. The petitioner produced 11 documents as Ex.P.1 to Ex.P.11 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The first respondent remained exparte.

5. The Claims Tribunal, on the basis of the available records, found that the first respondent's Car driver alone caused the accident and passed award for a sum of Rs.72,000/- along with interest @ 9% per annum as compensation to the injured [petitioner, D.Arvind Prasad] and directed the respondents jointly and severally to pay the compensation to the petitioner. Aggrieved over the said finding, the petitioner has come forward with the present Appeal praying to enhance the award amount.

6. When the appeal is taken up for hearing, I have heard the arguments of Mr.S.Gangaram Prasad, learned counsel appearing for the appellant, Ms.K.Saraswathi, learned counsel appearing for the second respondent and also perused the records carefully.

7. In the Claims Tribunal, when at the time of giving evidence, the petitioner [P.W.1] has stated about the manner of accident happened at the time of occurrence, according to him, the driver of the first respondent came in a wrong side and dashed against him. In order to substantiate the evidence given by P.W.1, the copy of the First Information Report and the copy of the scene of occurrence prepared by the Police Officers have been marked as Ex.P.1 and Ex.P.2 and those documents were clearly corroborated the evidence given by P.W.1. Further, after investigation, the Investigating Officer has filed a Charge Sheet against the driver of the first respondent, Ex.P.3 is the copy of the Charge Sheet proves the same.

8. In order to repudiate the evidence given by P.W.1, the driver of the first respondent has not been examined as witness before the Claims Tribunal, further on the side of the respondents, none have been examined to dispute the evidence given by P.W.1, so it presumes that the accident had happened only due to the act of the driver of the first respondent. Therefore, this Court affirms the findings arrived at by the Claims Tribunal in respect to the rash and negligent act of the first respondent's driver.

9. In respect to the quantum of compensation determined by the Claims Tribunal, Rs.25,000/- was awarded under the head of Disability, in order to prove the disability, before the Claims Tribunal, the Doctor, who issued the Disability Certificate has stated as the petitioner [claimant] sustained 40% disability. In the said circumstances, on going through the contents of Disability Certificate and Discharge Summary [Ex.P.4 and Ex.P.5] respectively, the petitioner sustained fractures on D.4, D.6 and D.7 in lumbar spine, further he sustained a deep lacerated wound on the left side of the head. Moreover, at the time of accident, the petitioner was studying in the 12th standard in the age of 17. Even though the learned counsel appearing for the second respondent would contend that the percentage of disability fixed by the Doctor is excessive one, in order to prove the same, before the Doctor on the side of the respondents nothing have been suggested as above. Hence, this Court accepted the evidence given by P.W.2 and came to the conclusion that the petitioner sustained 40% partial and permanent disability in the accident. In otherwise, as per the

evidence of P.W.1, the accident had happened in the year of 2005, so awarding Rs.1,500/- for the percentage of disability is the appropriate amount and accordingly, this Court awarded Rs.60,000/- under the head of Permanent Disability.

10. In the Claims Tribunal, Rs.1,000/- was awarded under the head of Transportation, which is also very meager and hence, the said amount is enhanced to Rs.2,000/-. Further, the Claims Tribunal awarded Rs.3,000/- under the head of Extra-nourishment, Ex.P.4 discloses that the petitioner got treatment in the Hospital for a period of 6 days, so per-day minimum Rs.1,000/- is necessary to meet out the expenses and hence, this Court awarded Rs.6,000/- under the head of Extra-nourishment.

11. Thereafter, the Claims Tribunal awarded Rs.33,000/- under the head of Medical Expenses, in order to prove the medical expenses, the petitioner produced the medical bills as Ex.P.6. The genuineness of the above bills have not been disputed on the side of the respondents. As per the said documents, the total amount spent by the petitioner for his medical expenses is Rs.32,526.38, for which, the Claims Tribunal awarded only Rs.33,000/-. Hence, the said amount is enhanced to Rs.34,000/-. Further, the Claims Tribunal awarded Rs.10,000/- under the head of Pain and Sufferings, which is unaltered. But no amount was awarded under the head of Loss of Amenities and Attendant Charges, for which, this Court awarded Rs.5,000/- eachm for the above heads. Accordingly, the modified compensation payable to the injured [petitioner, D.Arvind Prasad] is as under:

Head	Amount (Rs.)
For 40% Disability [1500 x 40]	60,000.00
Pain and Sufferings	10,000.00
Transportation	2,000.00
Medical Bills	34,000.00
Attendant Charges	5,000.00
Loss of Amenities	5,000.00
Extra-nourishment	6,000.00
Total	1,22,000.00

12.In the result,

[i] The Civil Miscellaneous Appeal is allowed;

[ii] The award amount is enhanced to Rs.1,22,000/- from Rs.72,000/-. The petitioner in M.A.C.T.O.P.No.3314 of 2005 is entitled to award amount of Rs.1,22,000/- [Rupees One Lakh Twenty Two Thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the appellant [petitioner, D.Arvind Prasad] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri
To

1.The Motor Accidents Claims Tribunal
Additional District and Sessions Judge
[Fast Track Court No.III], Chennai.

2.The Section Officer,
VR Section, Madras High Court.

+lcc to M/s.Balaji Prasad, Advocate sr.no.80589
+lcc to M/s.C.R.Krishnamoorthy, Advocate sr.no.76216

C.M.A.No.1791 of 2011

cnr(co)
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