

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1399 of 2018
and CMP.No.11218 of 2018

The Divisional Manager
National Insurance Company Ltd.,
Neyveli ..Appellant/2nd respondent

Vs

1.Venkatesh @ Venkatesan ..1st respondent/Claimant
2.V.P.Janarthanan ..2nd respondent/1st respondent.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 23.12.2014 made in M.C.O.P.No.3 of 2011 on the file of Motor Accident Claims Tribunal, II Additional District Court, Chidambaram.[Chidambaram Sub Court MCOP.No.296/2007].

For appellant : : Mr.S.Vadivel

For Respondents : : Mr.A.Muthu Kumar
for R1

R-2 - Set exparte before Tribunal.

J U D G M E N T

The Appellant is the Insurance company and fled the above appeal challenging the order and decree dated 23.12.2014 made in M.C.O.P.No.3 of 2011 on the file of Motor Accident Claims Tribunal, II Additional District Court, Chidambaram.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The averments in the claim petition filed by the Petitioner-Venkatesh @ Venkatesan is that on 25.08.2006 at about noon time, as the Petitioner was travelling from Keerapalayam Junction to Bhuvanagiri as pillion rider in the two wheeler bearing Reg.No.TN-49-P-0743 while going near Mahalingam rice mill at Keerapalayam junction, the 1st respondent vehicle bearing Reg.No.TCF-2216 came at high speed driven in a rash and negligent manner, dashed on the two wheeler of the Petitioner, causing fracture in his left hand and

grievous injuries all over the body. The said Lorry was insured with the 2nd respondent/Insurance company. The accident occurred only due to negligence of the 1st respondent vehicle driver. Immediately, after the accident, the Petitioner was admitted in the hospital at Annamalai Nagar and thereafter, took treatment as inpatient from 26.08.2006 to 07.09.2006 at Vinodh Hospital, Thanjavur. The Petitioner suffered bone crack in the left leg and underwent surgery for putting plate with bones. He also suffered cut injury in three fingers of his right hand. He lost sense in his right hand. The Petitioner was working as a Painter, he was earning Rs.8000 to 10,000/- per month. Due to the injury suffered he is not in a position to carry on his avocation resulting in loss of income to him. At that point of time, the Petitioner was aged 25 years only. His future prospects is affected. Thus, the Petitioner sought for a sum of Rs.30,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent /Insurance company 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 denied. The accident occurred only due to negligence of the rider of the two wheeler in which the Petitioner travelled as pillion rider. The owner and insurer of the said two wheeler are necessary parties and as they are not impleaded, the same will affect the claim of the Petitioner. As the driver of the 1st respondent lorry was no way responsible for the accident, the respondents are not liable to pay any compensation. The amount claimed by the Petitioner is highly excessive. The respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1, medical expert as P.W.2 and produced documents Ex.P.1 to Ex.P.19 to prove his claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. After analyzing the evidence on record, the Tribunal found the negligence of the 1st respondent Lorry driver alone caused the accident passed an award for a sum of Rs.7,67,400/- payable by the respondents to the Petitioner. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the 2nd respondent/Insurance company contends that the Tribunal failed to analyse the

evidence on record properly. The Petitioner even though took treatment as inpatient for 23 days does not suffer any functional disability. Therefore, the Tribunal erred in applying multiplier method. The disability assessed by the doctor at 45% is on the higher side. The medical expert evidence given by P.W.2 is not based on appropriate assessment. The 2nd respondent sought for setting aside the award amount as the same is highly excessive and sought to entertain the appeal.

7. Per contra, the learned counsel for the claimant counsel contends that the Tribunal after analyzing the evidence on record came to correct conclusion and fixed negligence on the 1st respondent vehicle driver. The award passed by the Tribunal is just and reasonable. There is no need or necessity to interfere with the same. Thus the petitioner sought for dismissal of the appeal.

8. This is only quantum appeal. Both sides have not seriously challenged the finding of the Tribunal regarding negligence aspect. The Petitioner who is the injured, deposed as P.W.1 and clearly stated that as she was proceeding in the two wheeler as pillion rider near Mahalingam Rice Mill, Keerapalayam junction on 28.05.2006, around noon, the 1st respondent vehicle bearing Reg.No.TCF-2226 came at high speed and dashed on the Petitioner's two wheeler from the back side. The accident occurred only due to rash and negligent driving of the 1st respondent Lorry driver. The Petitioner also stated that the Police registered Ex.P.1-FIR against the 1st respondent vehicle driver only. The contents of Ex.P.1-FIR corroborates the oral version of P.W.1 about the manner in which the accident occurred. There is no contra evidence let in by the respondent. Further it is clear from Ex.P.1-MVI report that there was no mechanical defect in the vehicle. In such circumstances, it is clear from the evidence of P.W.1 and contents of Ex.P.1-FIR that the negligence of the 1st respondent vehicle driver alone caused the accident. The conclusion of the Tribunal in that regard is just and proper.

9. The Petitioner stated that he was aged 25 years and in the accident he suffered fracture in shaft femur, lacerated injury in left elbow, laceration and contusion in the thighs and grievous injuries over the hip. Due to the injuries suffered, the petitioner who was working as a Painting Supervisor and Sub Contractor is not in a position to carry on his normal activities resulting in loss of earning. The Petitioner also produced Ex.P.2 and Ex.P.4-Wound Certificate to prove the nature of injuries suffered by him. He also produced Ex.P.3 -Discharge Summary to show that he took treatment as inpatient. The

Petitioner further stated that he suffered permanent disability and is still taking treatment.

10. The Petitioner examined P.W.2-doctor who on personal examination assessed disability suffered by the Petitioner and issued Ex.P.18-Disability Certificate. According to P.W.2, the Petitioner due to injuries suffered by him, finds difficulty in sitting cross legged and is unable to do any work with his left hand. He is also having problem in standing properly. P.W.2 also stated that during his examination, he found the petitioner is not in a position to walk properly. There is surgical scar of 15 cm in the left thigh of the Petitioner. The function of the left hip is reduced. The left leg was shortened by 6 cm than the right leg; for the fracture suffered in the left leg, the petitioner underwent surgery to fix plat. The functioning of the left leg and left hand is reduced by 36% and 15% respectively. Thus, the medical expert who deposed as P.W.2 assessed the disability suffered by the Petitioner at 45%. He also took Ex.P.9-X ray and on that basis, fixed permanent disability suffered by the Petitioner.

11. The Tribunal considering the evidence of P.W.2 fixed the disability suffered by the Petitioner at 45% and fixed the notional monthly income of the Petitioner taking into consideration the future prospects also at Rs.4500/- and applied multiplier '18' and assessed the loss of earnings suffered by the Petitioner. This, the 2nd respondent/Insurance company challenges as abnormal on the ground that there is no evidence to show functional disability suffered by the Petitioner and the percentage of disability fixed by the Tribunal is highly excessive.

12. Admittedly, P.W.2/doctor has not given treatment to the Petitioner. There is no clear cut evidence to show that the petitioner suffers from functional disability or loss of income subsequent to the injury. However, there is no contra evidence let in by the respondents. In such circumstances, no ground is made out to reduce the disability suffered by the Petitioner at 45% as assessed by P.W.2/doctor. In such circumstances, in respect of the disability suffered by the petitioner, it is appropriate to apply multiplier method to calculate the loss of earning capacity of the Petitioner.

13. The Petitioner states that he was earning Rs.8000 - 10,000/- per month by working Painting Supervisor. However, there is no proof for it. The Tribunal fixed the monthly income

including future prospects at Rs.4,500/-. The same appears to be correct. The Petitioner having undergone treatment as inpatient for nearly 23 days and considering the nature of fracture and other injury suffered by him, it is vividly clear that he could not have attended to his normal avocation for nearly 5 months viz., during the treatment period and recovery period. Therefore, loss of income during treatment period is calculated as under:-

$4,500 \times 5 \text{ months} = \text{Rs.}22,500/-$.

14. The learned counsel for the appellant/Insurance company contends that the Petitioner has not suffered any functional disability and there is no need to apply multiplier method as done by the Tribunal. However, it is clear from the evidence of P.W.2 that the length of petitioner's left leg is shortened by 6 cm and rotating capacity of the left knee cap is reduced and the functional ability of the left leg and left hand is also reduced by 36% and 15% respectively. It is also clear from P.W.2's evidence that the Petitioner finds difficulty in standing as well as sitting down cross legged. Being a Painting Supervisor and Sub Contractor, the Petitioner will be required to walk around and stand for long time to carry on his work. Thus, with the kind of disability suffered by the Petitioner as stated by P.W.2/doctor, the Petitioner will not be able to function in full capacity to carry on his work. Thus, it is to be held that the petitioner has suffered functional disability. However, P.W.2/doctor is not enclosed any calculation memo with disability certificate - Ex.P.18 and he has not given treatment to the Petitioner. Therefore the disability suffered by the Petitioner is fixed at 30%. As stated earlier, the Petitioner's functional ability being affected, it will be appropriate to apply multiplier method. As the petitioner was aged 25 years, the multiplier to be applied is '18'. Thus, the loss of earning capacity is calculated as follows:-

$\text{Rs.}4500/- \times 30\% \times 12 \times 18 = 2,91,600/-$.

15. The Petitioner also produced Ex.P.6 to Ex.P.8, Ex.P.14 to Ex.P.17- Medical Bills to prove the expenses incurred by him. As such, the tribunal is justified in awarding Rs.2,22,500/- towards medical expenses and therefore, the same is also acceptable and needs no interference. The amount provided by the Tribunal under other heads is appropriate and therefore, except the above said modification, the compensation provided under other heads are confirmed. Thus the award passed by the Tribunal, is modified as under:

Sl.No.	Heads	Amount Awarded by the Tribunal	Amount awarded by this Court
1.	Loss of future earnings	Rs.4,37,400/-	Rs. 2,91,600/-
2.	Loss of income for 3 months	Rs. 13,500/-	Rs. 22,500/-
3.	Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
4.	Medical expenses and Extra nourishment	Rs.2,22,500/-	Rs.2,22,500/-
5.	Loss of amenities	Rs. 25,000/-	Rs. 25,000/-
6.	Loss of expectancy	Rs. 25,000/-	Rs. 25,000/-
7.	Attendant charges	Rs. 9,000/-	Rs. 9,000/-
8.	Ambulance	Rs. 10,000/-	Rs. 10,000/-
	Total	Rs.7,67,400/-	Rs.6,30,600/-.

16. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced from Rs.7,67,400/- to Rs.6,30,600/-. The 1st first respondent/claimant is entitled to award amount of Rs.6,30,600/- (Rupees Six lakhs thirty thousand six hundred only) which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;

(iii) The Appellant/Insurance company is directed to deposit the award amount, along with proportionate interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iv) On such deposit, the injured claimant is entitled to withdraw the same with accrued interest, by filing necessary application before the Tribunal. No costs. Consequently, connected CMP.No.11218 of 2018 is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
II Additional District Court, Chidambaram.

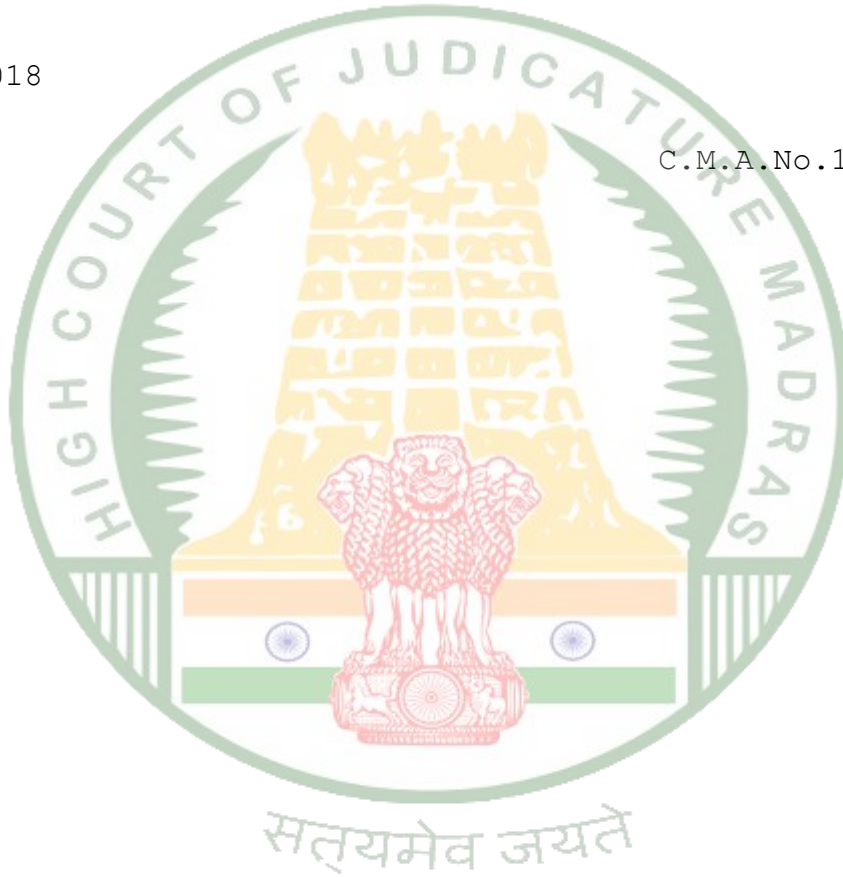
+1cc to Mr.S.Vadivel Advocate SR.NO.46742

+1cc to Mr.A.Muthukumar, Advocate SR.NO.46956

KGK (CO)

sm:25.9.2018

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