

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1414 of 2018

R.Thanikachalam ... Appellant/Petitioner

...vs...

1.The Joint Director of
Health Services,
Ariyalur-621807.

2.The Divisional Manager,
National Insurance Company Limited,
No.110, Jawaharlal Nehru Street,
Pondicherry-605001.

Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 14.11.2017 made in MCOP.No.875 of 2016 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Cuddalore.

For Appellant : Mr.S.P.Yuvaraj

Respondent : Mr.J.Chandran for R-2

1st Respondent Remained Exparte in
Lower Court.

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal, dated 14.11.2017 made in MCOP.No.875 of 2016 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Cuddalore, the present appeal has been filed by the petitioner/ claimant to enhancement of the award amount.

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 10.06.2015 at about 12.15 p.m., while the petitioner was riding his Motor Cycle bearing Registration No.PY-01-AJ-3053, keeping to the left side of the Silabminathanpettai to Satthamampattu Road, while going near Murugan Kovil, from East to West Direction, the first respondent Ambulance bearing Registration No.TN-61-G-0118, came at high speed, in a rash and negligent manner, dashed against the petitioner's motor cycle causing grievous injuries on the right foot and multiple grievous injuries all over the body. The accident occurred only due to the negligence of the first respondent vehicle driver. The petitioner was aged 45 years and by carrying on Tailoring work as well as agricultural coolie was earning Rs.15,000/- per month. Due to the injuries suffered, he is not able to carry on his normal avocation resulting in loss of income to him. Thus, the petitioner sought for a sum of Rs.5,00,000/- 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 negligence of the petitioner alone caused the accident and the driver of the first respondent vehicle is no way responsible for the accident. The petitioner did not possess valid driving licence. The petitioner without noticing the on coming vehicle, tried to cross the road and due to that the first respondent vehicle dashed against him. Even though the accident occurred on 10.06.2015 at about 12.15 hours, the first information report was registered only on the next day. The claim of the petitioner about the nature of injuries, avocation and income is disputed. 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, produced documents Ex.P1 to Ex.P9 to prove his claim. On the side of the respondents, R.W.1 was examined and Ex.R1 is produced to contradict the claim of the petitioner.

7.The Tribunal, on the basis of materials available on record, found the negligence of the first respondent vehicle driver only caused the accident, passed an award for a sum of Rs.1,14,000/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

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

9. The learned counsel appearing for the appellant/petitioner/ claimant contends that the Tribunal failed to consider the fact that the petitioner filed a petition under Section 166(1) of the Motor Vehicles Act and wrongly treated the petition as one filed under Section 163(A) of the Motor Vehicles Act. The Tribunal failed to consider the age of the claimant was 45 years and due to the injuries suffered and operation undergone for fixing wire in the fracture of right foot his functional capacity is affected. The Tribunal ought to have adopted the multiplier method as the petitioner being a Tailor is unable to perform due to the fracture suffered in his foot. The Tribunal failed to provide for appropriate amount under different heads. The award passed by the Tribunal is very low. Thus, the appellant/petitioner sought for enhancement of the award amount by entertaining the appeal.

10. Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contends that the accident occurred only due to the negligence of the petitioner and he has not suffered any functional disability. The award passed by the Tribunal under different heads is excessive. There is no need or scope for enhancement of the said award amount. The petitioner has come forward with the claim petition under Section 166(1) of the Motor Vehicles Act as clearly stated so in the claim petition. As such, it is pointed out that the Tribunal has wrongly proceeded under impression that the petition was filed under Section 163(A) of the Motor Vehicles Act, and the same is not proper. The petitioner sought for compensation only under Section 166(1) of the Motor Vehicle Act and on that ground alone, the claim is to be considered. Thus, the 2nd respondent Insurance Company sought for dismissal of the appeal.

11. The petitioner stated that on 10.06.2015 at about 12.15 P.M., while he was riding his two wheeler bearing Registration No.PY-01-AJ-3053, near Murugan Kovil in Silabminathanpettai to Satthamampattu Road, the first respondent vehicle bearing Registration No.TN-61-G-0118 insured with the second respondent Insurance Company, came at high speed and dashed against him. He also stated that on his complaint alone Ex.P1 First Information Report was registered against the first respondent driver.

12. On the other hand, R.W.1 was examined to prove that the negligence of the petitioner alone caused the accident. The Special Sub Inspector of Police, attached to Naduveerapattu Police Station, deposed as R.W.1 and stated that the accident occurred due to the negligence of the petitioner and Ex.P1 FIR

was closed as mistake of fact. The copy of the final report is filed as Ex.R1. Thus, according to R.W.1, there is no negligence on the part of the first respondent ambulance driver. However, the driver of ambulance is not examined before the Tribunal. In such circumstances, there is no evidence on record to show as to whether the first respondent ambulance was carrying any patient or it was proceeding in normal course. In such circumstances, there is nothing on record to show that the petitioner drove the vehicle in a negligent manner. Ex.P8 Rough Sketch of the occurrence spot also does not help the respondent claim. The Tribunal has simply fixed the negligence on both the drivers, but there is no basis for doing so. Considering the circumstances of the case, it is clear that the negligence of the first respondent vehicle driver alone caused the accident. Therefore, the entire negligence is fixed on the first respondent vehicle driver and the findings of the tribunal which is contrary to the same is set aside.

13.The petitioner stated that he was aged 45 years and due to the accident, he suffered fracture in his right foot and immediately after the accident he took treatment at Government Hospital, Cuddalore. The Accident Register issued by the said Hospital is marked as Ex.P3. He took treatment as inpatient from 10.06.2015 to 16.06.2015 and to prove the same, Ex.P2 Discharge summary issued by the Government Hospital, Cuddalore is produced. For the fracture suffered in the right foot, surgical treatment was given on 05.09.2015. Thus, the petitioner states that he has suffered permanent disability. To prove that the petitioner suffered permanent disability, the Medical Board at Cuddalore Government Hospital issued Ex.P9 disability certificate fixing the disability at 10%. As the deceased was aged 45 years, the correct multiplier to be applied is 14. As stated earlier, due to the injuries suffered by the petitioner, he will not be in a position to carry on his work normally. However, as there is no proof of income earned by the petitioner, the Tribunal fixed the notional monthly income at Rs.5,000/-. Thus, the loss of income is calculated as follows:-

$$\text{Rs.5,000/-} \times 12 = \text{Rs.60,000/-} \times 14 = \text{Rs.8,40,000/-} \times 10\% = \text{Rs.84,000/-}.$$

14.The petitioner having suffered fracture and functional disability and underwent treatment as inpatient for a length of period, he would have suffered lot of pain and suffering. For the same, a sum of Rs.25,000/- is provided instead of Rs.15,000/- given by the Tribunal. The petitioner having suffered fracture and underwent treatment as inpatient in the Government Hospital, Cuddalore would have needed the assistance of attender at least for a period of two months. Hence, it will be appropriate to provide a sum of Rs.10,000/- towards attender charges. The amount awarded by the Tribunal under the other

heads remain unaltered and the same is hereby confirmed. 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 income	84,000.00	84,000.00
2.	Pain and sufferings	15,000.00	25,000.00
3.	Extra-nourishment	5,000.00	5,000.00
4.	Transportation	5,000.00	5,000.00
5.	Medical Expenses	5,000.00	5,000.00
6.	Attender Charges	-	10,000.00
	Total	1,14,000.00	1,34,000.00

Accordingly, a sum of Rs.1,14,000/- Awarded by the Tribunal is modified and the same is enhanced to Rs.1,34,000/-.

15. In the result, this appeal is partly allowed. No costs. The amount of Rs.1,14,000/- awarded by the Tribunal dated 14.11.2017 made in MCOP.No.875 of 2016 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Cuddalore, is enhanced to Rs.1,34,000/-. The 2nd respondent/Insurance Company is directed to deposit the entire Award amount of Rs.1,34,000/- 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. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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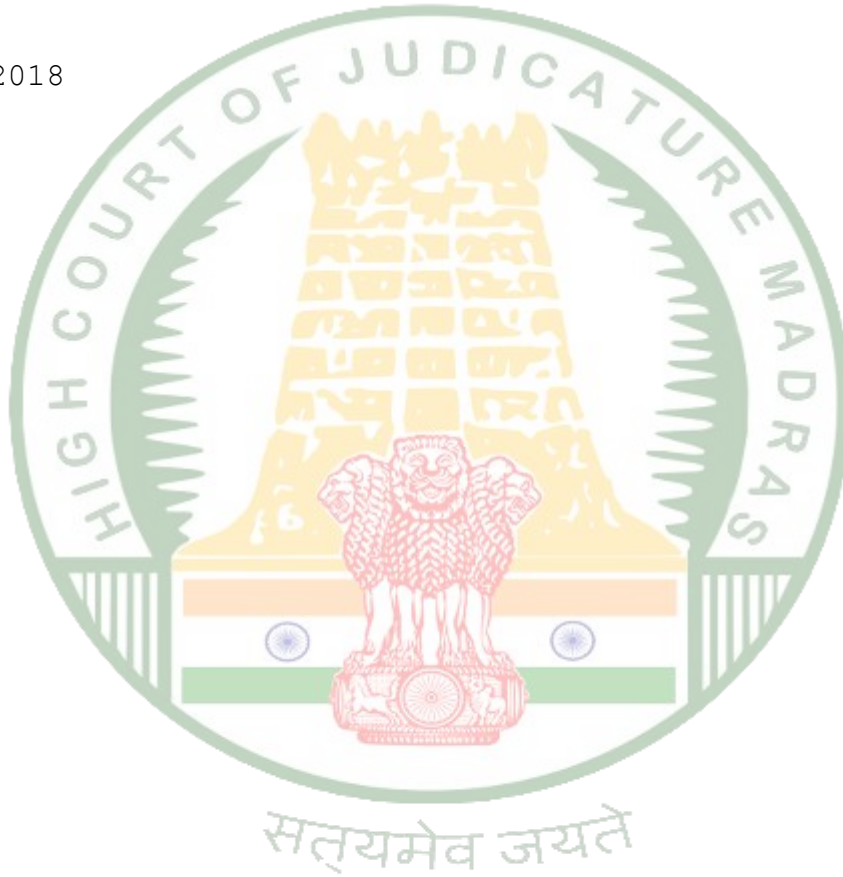
The Special Subordinate Judge,
The Motor Accident Claims Tribunal,
Cuddalore.

+1cc to Mr.S.P.Yuvaraj, Advocate sr.no.43504

+1cc to Mr.J.Chandran, Advocate sr.no.43647

C.M.A.No.1414 of 2018

sj(co)
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