

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.156 of 2018

N.Jothi

...Appellant/Petitioner

..vs..

1.P.Arivanan

2.Shriram General Insurance Company Limited,
Motors Third Party Claims
II Floor, Mukambikai Complex,
No.4, Lady Desika Road, Mylapore,
Chennai - 600 004.

...Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2015 made in MCOP.No.137 of 2015 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai.

For Appellants : Mr.S.K.Subathra

For Respondents : Mr.S.Dhakshnamoorthy R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 30.10.2015 made in MCOP.No.137 of 2015 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

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

3. The case of the petitioner is that on 28.11.2014 at about 17.30 hours, when the petitioner was riding his two wheeler in Tambaram - Chengalpet GST Road, opposite to Maraimalai Nagar Railway Station, a Tata Goods Carriage vehicle bearing Registration No.TN-22-AU-7750 came at high speed, suddenly took right turn at Anna Salai Junction and dashed against the two wheeler of the petitioner causing him multiple grievous injuries to him. At the time of the accident, the petitioner was aged about 65 years and employed as mason

earning a sum of Rs.15,000/- per month. Since he suffered fracture in the right leg Both bones, fractured of Right 4,5,6 and 7 Ribs and also injuries all over the body, he is not able to do any work as mason resulting in loss of income to him. Hence, he seeks a sum of Rs.10,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent/Insurance company filed counter denying the claim of the petitioner about the accident. The second respondent also disputed the claim regarding the petitioner's age, avocation and income. The first respondent vehicle is not involved in the accident, it is falsely implicated. The second respondent also disputed the claim of the petitioner that the Tata Goods vehicle bearing Registration No.TN-22-AU-7770 was insured with them. The claim of the petitioner is exorbitant. Thus, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined herself as P.W.1 and medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P14 to substantiate his claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, after considering the materials available on record, found the negligence of the first respondent vehicle driver alone resulted in the accident and awarded a sum of Rs.4,44,164.50 as compensation to the petitioner payable by the respondents. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed this present appeal.

7. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contends that the Tribunal failed to assess the disability suffered by the petitioner properly. There is no ground for the Tribunal to fix the disability at 50%, while the same was assessed at 70% by P.W.2 Doctor. The Tribunal failed to award necessary amounts under different heads. The Tribunal after finding that the petitioner is suffering from grievous multiple injuries should have provided for attender charges and also for loss of amenities. Thus, the petitioner seeks for enhancement of the award amount by entertaining the appeal.

9. Per contra, the learned counsel appearing for the second respondent Insurance Company contended that the claim of the petitioner about the nature of accident as well as the age, avocation and income of the petitioner is not established. The Tribunal on the available evidence properly appreciated the same and awarded a just and fair compensation. No ground is made out by the petitioner for enhancement award amount. Thus, the second respondent seeks dismissal of the appeal.

10. The petitioner who deposed as P.W.1 stated that on 28.11.2014 at about 17.30 hours, while he was proceeding in his two wheeler in Tambaram - Chengalpet GST Road, near Maraimalai Nagar Railway Station, a Goods Carriage vehicle bearing Registration No.TN-22-AU-7750 came at high speed and suddenly took right turn at Anna Salai Junction without following the traffic rules dashed against the two wheeler in which he was proceeding. According to the petitioner, the negligence of the said goods vehicle driver alone caused the accident. The police registered Ex.P1 First Information Report against the driver of the goods vehicle only. Further, after completing the investigation, the police also laid charge sheet Ex.P2 against the goods vehicle driver only. It is therefore clear from the evidence of P.W.1 as well as the contents of Ex.P1 and Ex.P2 that the accident occurred due to the negligence of the first respondent vehicle driver only. The respondents has not chosen to let in any contra evidence to disprove the claim of the petitioner. As such, it is clear from the evidence of P.W.1 as well as Ex.P1 and Ex.P2 averments that the accident occurred only due to the negligence of the first respondent vehicle driver. The above Tata Goods Vehicle belongs to the first respondent and insured with the second respondent Insurance Company is not disputed.

11. The petitioner states that he was aged about 65 years at the time of accident and he was employed as mason. The petitioner, after suffering grievous injuries, took treatment as in patient in Parvathy Hospital, Chrompet from 28.11.2014 to 03.12.2014. The discharge summary is produced as Ex.P4. The Doctor, who examined and assessed the disability suffered by the petitioner while deposing as P.W.2 stated that the petitioner has suffered partial permanent disability at 70%. The learned counsel appearing for the second respondent contends that the disability percentage is given on the higher side and the same should not be accepted. It is true that P.W.2 has not treated the petitioner. Further, he has not filed any work sheet or any other guidelines relied upon by him to assess the disability before the Tribunal. However, considering the fracture of Both bones in the right leg in the fracture of Right 4,5,6 and 7th ribs, this Court is inclined to accepted the plea of the petitioner regarding the disability suffered by him. The

petitioner being a mason if he is not able to stand and do his work, he will suffer loss of income. As such, the petitioner having suffered 70% permanent disability and the functional disability is fixed at 50%. As such, considering the nature of disability suffered by him, this Court is awarding the following amount. 50% of permanent disability x Rs.3000/- per percentage = Rs.1,50,000/-.

12. The petitioner who suffered fracture, took treatment as in patient at Parvathy Hospital, Chrompet and thereafter as out patient. As such it will be appropriate to give him Rs.20,000/- for transport expenses and another sum of Rs.20,000/- is given towards extra-nourishment. Considering the nature of injuries suffered by him and the treatment undergone by the petitioner, a sum of Rs.75,000/- is awarded for pain and sufferings. The petitioner stated that he incurred a sum of Rs.1,30,664.50 as medical expenses and produced the medical bills as Ex.P6 for the same. Hence, on the basis of the same, he is paid a sum of Rs.1,30,664.50 towards medical expenses. The petitioner being a mason states that he earned a sum of Rs.15,000/- per month. However, no proof for the same is produced. In such circumstances, the notional income is fixed at Rs.6,500/- per month. Considering the nature of injuries suffered by the petitioner, he could not have attended to his work for at least 6 to 7 months. Hence, the loss of income during treatment period is calculated as follows. Rs.6,500/- x 7 = Rs.45,500/-. Considering the injuries suffered by the petitioner a sum of Rs.25,000/- is awarded towards loss of amenities and another sum of Rs.50,000/- is awarded towards future medical expenses. Considering the nature of injury and treatment under gone by the petitioner it will be appropriate to give Rs.25,000/- for attender charges. Further a sum of Rs.3,000/- is awarded towards damage to cloths. Accordingly, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent Disability	1,50,000.00	1,50,000.00
2.	Pain and sufferings	75,000.00	75,000.00
3.	Extra nourishment	5,000.00	20,500.00
4.	Transport to Hospital	5,000.00	20,000.00
5.	Damage to Cloths	2,000.00	3,000.00
6.	Attender Charges	1,500.00	25,000.00
7.	Medical expenses	1,30,664.50	1,30,664.50
8.	Future Medical Expenses	50,000.00	50,000.00
9.	Loss of amenities	25,000.00	25,000.00

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
10.	Loss of income during treatment period	-	45,000.00
	Total	4,44,164.50	5,44,164.50

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.5,44,164.50 and the same is rounded to Rs.5,44,200/-.

13. In the result, this appeal is partly allowed. No costs. The sum of Rs.4,44,200/- awarded by the Tribunal dated 30.10.2015 made in MCOP.No.137 of 2015 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai is hereby enhanced to Rs.5,44,200/-. The second respondent Insurance Company is directed to deposit the entire modified award amount of Rs.5,44,200/- 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/petitioner is not entitled for interest for the delay period of 318 days. On such deposit, the appellant/claimant is permitted to withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Judge, Small Causes Court,
The Motor Accident Claims Tribunal, Chennai.

2. The Registrar, Court of Small Causes, Chennai.

+ 1 cc to MR. S. K. Subatra, Advocate Sr.13070

+ 1 cc to Mr. S. Dhakshnamoorthy, Advocate Sr.13961

C.M.A.No.156 of 2018

GJ(CO)

EU(13/04/2018)