

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1323 of 2011

B.Ramesh Babu ... Appellant/Petitioner

..vs..

1.C.Muthu

2.M/s.United India Insurance Company Ltd.,

... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decretal Order dated 16.12.2009, made in MCOP.No.5231 of 2005 on the file of the Motor Accident Claims Tribunal/(Fast Track Court No.V), Chennai.

For Appellant : Mr.T.G.Balachandran
Respondents : Mr.C.Paranthaman

JUDGMENT

Aggrieved over the quantum of compensation awarded by the Tribunal dated 16.12.2009, made in MCOP.No.5231 of 2005 on the file of the Motor Accident Claims Tribunal/(Fast Track Court No.V), Chennai, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. For the 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 01.11.2005 at about 20.30 hours, when the petitioner was proceeding in the two wheeler bearing Registration No.TN-22-AH-0412 at MGR Road, near Pazhavanthangal Subway Road, Chennai, a Load Auto bearing Registration No.TN-22-V-8464, came at high speed, driven in a rash and negligent manner dashed on the motor cycle, causing grievous injuries to the petitioner and also the pillion rider one Murugesan. The first respondent is the owner and the second respondent is the insurer of the vehicle. The accident occurred

only due to the negligence of the first respondent auto driver. The petitioner was aged 33 years and was employed as van driver earning a sum of Rs.3,500/- per month and Rs.20/- per day as batta. Due to the injuries suffered, the petitioner is not in position to carry on his driving work. Thus, the petitioner suffered loss of income. Hence, the petitioner sought for a sum of Rs.4,00,000/- 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 by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The first respondent driver did not drive the vehicle in a rash and negligent manner and it was only due to the negligence of the rider of the two wheeler, the accident occurred. The claim of the petitioner about his age, avocation and income is denied. The petitioner has to prove that the driver of the first respondent possessed valid driving licence. The claim of the petitioner about the injuries suffered by him is not correct. The compensation amount claimed by the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

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

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.90,000/- as compensation to the petitioner. Aggrieved over the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard the learned counsel appearing for the petitioner/claimant and the learned counsel appearing for the second respondent-Insurance Company and perused the materials available on record.

8. The learned counsel appearing for the appellant/petitioner contends that the Tribunal after fixing the negligence on the first respondent driver as the cause for the accident, ought to have provided for higher compensation. The amount awarded under different heads is very nominal. Thus, the petitioner sought for enhancement of the Award amount by entertaining the appeal.

9. On the other hand, disputing the claim of the petitioner, the learned counsel appearing for the second

respondent-Insurance Company contends that the Tribunal erred in fixing the negligence on the part of the 2nd respondent driver as the cause for the accident. The Award passed by the Tribunal itself is on the higher side. The award passed by the Tribunal under differed heads is highly excessive. Thus, the second respondent Insurance Company sought for dismissal of this appeal.

10.It is only quantum appeal. Both sides are not disputing the conclusion arrived at by the Tribunal that the negligence of the first respondent's driver alone caused the accident. The injured petitioner who deposed as P.W.1 clearly stated about the manner in which the accident occurred. According to him, the first respondent load auto bearing Registration No.TN-22-V-8464 came at high speed and dashed against his two wheeler. Ex.P1 First Information Report is also registered against the first respondent driver only. The contents of Ex.P1 First Information Report corroborates the evidence of P.W.1. The respondents has not let in any rebuttal evidence. As such, on the basis of P.W.1 oral version and the contents of Ex.P1 First Information Report, the Tribunal correctly concluded that the negligence of the first respondent vehicle driver alone caused the accident. As such the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation to the petitioner.

11.The petitioner who deposed as P.W.1 stated that he suffered fracture of right leg both bone, head injury and also cut injury in the right elbow and little finger and multiple grievous injuries all over his body. After the accident, he was admitted in Balaji Hospital, Guindy and took treatment from 01.11.2005 to 10.11.2005 as inpatient and underwent plastic surgery in the right leg on 02.11.2005. Subsequently, the petitioner was again admitted in the same Hospital and took treatment as inpatient from 24.11.2005 to 26.11.2005 and skin drafting was done in his leg. Thereafter, due to severe pain in the legs, he took treatment as inpatient in Nandhini Hospital from 08.12.2005 and on 09.12.2005. Thereafter, he was taking treatment as outpatient for nearly 8 months. Thus, the petitioner contends that he suffered multiple injuries and consequently he was unable to carry on his driving profession resulting in loss of income to him.

12.The petitioner produced Ex.P2 and Ex.P3 Discharge Summary issued by Balaji Hospital as well as Ex.P7 Discharge Card issued by Nandhini Hospital to prove the nature of injuries suffered by him. The petitioner stated that a rod was fixed in his right leg and the same was subsequently removed. To prove the disability suffered by him, the petitioner examined P.W.2 Doctor and he stated that the movement of the petitioner's right leg is restricted and there is a scar in the right leg. P.W.2 also stated that there was mal-union of bones in the right leg and he assessed the disability at 40%. P.W.2 further stated that

on physical examination of the petitioner and by taking X-ray Ex.P14, the disability was assessed by him. In the absence of any contra evidence, on the basis of P.W.2 Doctor Evidence, the disability suffered by the petitioner is fixed at 40%. As the accident occurred during 2005, it will be appropriate to compensate him at the rate of Rs.1000/- per percentage. Thus, the disability compensation is calculated as follows:- $40\% \times \text{Rs.1000} = \text{Rs.40,000/-}$.

13. Admittedly, the petitioner was a driver by avocation, due to the injuries suffered by him, he could not have carried on his normal avocation at least for four months. The petitioner has admitted that his monthly income was Rs.3000/- and daily batta was Rs.20/-. As such, it will be appropriate to fix the monthly income at Rs.4,000/- per month. Thus, the loss of income during treatment period is calculated as follows. $4 \times \text{Rs.4,000/-} = \text{Rs.16,000/-}$.

14. Further, the petitioner being a driver and he having suffered 40% disability due to the fracture of both bones in the right leg and also injury on his right elbow, he will find it difficult to carry on the driving work. Hence, it will be appropriate to compensate the loss of earning capacity at 30%. As the petitioner was aged 33 years and the multiplier to be applied is 17. As such, the compensation for loss of earning capacity is calculated as follows:-

$\text{Rs.4,000/-} \times 12 = \text{Rs.48,000/-} \times 17 = 8,16,000/- \times 30 / 100 = \text{Rs.2,44,800/-}$.

15. It is clear from Ex.P5, Ex.P6 and Ex.P12 medical bills and hospital bills that the petitioner has incurred a sum of Rs.76,000/- towards medical expenses. As such, the petitioner entitled for the same. Considering the period of treatment undergone by him and the injuries suffered, a sum of Rs.10,000/- provided by the Tribunal towards pain and sufferings is hereby confirmed. Considering the nature of injuries suffered by the petitioner, a sum of Rs.1,500/- provided by the Tribunal towards Extra-nourishment is enhanced to Rs.5,000/-. The sum of Rs.500/- provided by the Tribunal under the head of Transportation is hereby enhanced to Rs.5,000/-. In other aspects, the award passed by the Tribunal under different heads remain unaltered and the same is confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning during treatment period	10,000.00	16,000.00
2.	Permanent Disability	40,000.00	40,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
3.	Transportation	500.00	5,000.00
4.	Medical Expenses	28,000.00	76,000.00
5.	Extra nourishment	1,500.00	5,000.00
6.	Pain and sufferings	10,000.00	10,000.00
7.	Loss of earning capacity	-	2,44,000.00
	Total	90,000.00	3,96,000.00

Accordingly, the compensation Awarded by the Tribunal is modified and the same is enhanced to Rs.3,96,000/-.

16. In the result, this appeal is allowed. No costs. The amount of Rs.90,000/- awarded by the Tribunal dated 16.12.2009, made in MCOP.No.5231 of 2005 on the file of the Motor Accident Claims Tribunal/(Fast Track Court No.V), Chennai, is enhanced to Rs.3,96,000/-. The Second respondent-Insurance Company is directed to deposit the entire Award amount of Rs.3,96,000/- 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 (CO)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Judge, Fast Track Court No.V, Chennai.
2. The Section Officer, V.R. Section High Court.

+1cc to Mr.TG.Balachandran, Advocate SR.No.43832

+2cc to Mr.C.Paranthaman, Advocate SR.No.43818

C.M.A.No.1323 of 2011

GMV (26/09/2018)