

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1435 of 2017
and CMP.No.7597 of 2017

1.The Executive Engineer &
General Superintendent, Chennai Metropolitan & Munsiffi
Railway Nagar, PWD, Chepauk, Chennai.

2.The Executive Engineer
(Planning & Design)
PWD, Palace Campus, Thanjavur ..Appellants/
Respondents 1 and 2

Vs

1.Murali ..1st Respondent/
Claimant

2.K.Rajinikant

3.Palanisamy

4.Bajaj Allianz Insurance Company Ltd.,
Rep. By its Branch Manager
25-26, Prince Tower,
4th Floor, College Road
Nungambakkam, Chennai ..Respondents 2 to 4 /
Respondents 3 to 5

Civil Miscellaneous Appeal filed against the judgment and
decree dated 22.09.2014 passed in M.C.O.P.No.22 of 2013 by the
Motor Accident Claims Tribunal, (Sub-Court), Tiruvarur.

For appellants : : Ms.A.Madhumathi
for Special Government Pleader (CS)
Mr.P.Thiagarajan for R1.

For Respondents : : Mr.Michael Visuvasam
for R4.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the
respondents 1 and 2 before the Tribunal, against the judgment
and decree dated 22.09.2014 passed in M.C.O.P.No.22 of
2013 by the Motor Accident Claims Tribunal, (Sub-Court),
Tiruvarur.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioner is that on 14.03.2011 while the petitioner was travelling in a Auto in Tiruvarur to Thanjavur Main road while going near civil supplies godown, the respondent jeep bearing Reg.No.TN-07-G-1971 came at high speed, dashed on the auto in which the petitioner was travelling causing him multiple grievous injuries. The accident occurred due to the negligence of the jeep driver only. The Petitioner took treatment at Government Hospital, Tiruvarur and subsequently in Thanjavur Medical College Hospital as inpatient. He was discharged after two months treatment. Thereafter, the petitioner underwent treatment at Stanley Hospital, Chennai, from 07.06.2012 to 17.08.2012. The Petitioner was aged 32 years and by working as Mason, was earning 9000/- per month. Due to the injury suffered, he is unable to attend to his normal avocation. Hence, he seeks a sum of Rs.9,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 1st and 2nd respondents contend that the accident does not occur in the manner alleged by the Petitioner. The 1st respondent jeep bearing Reg.No.TN-07-G-1971 driven by the 3rd respondent was proceeding at normal speed and as it was going near District Collector Office, Tiruvarur, at about 9.45 a.m.; the driver noticed two ambassador cars coming in the opposite direction. At that time, the auto bearing Reg.No.TN-50-F-2856 overtook the ambassador car coming in the opposite direction at high speed. On seeing that the 1st respondent jeep driver slowed down his vehicle and stopped the vehicle at the mud portion of the road. In spite of that, the driver of the auto unable to control his vehicle, dashed against the respondent jeep resulting in the accident. The accident occurred only due to negligence of the auto driver. The claim of the Petitioner about his avocation, age and income is denied. The compensation claimed by the Petitioner is highly excessive. Thus, the 1st and 2nd respondents seek dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical experts as P.W.2 and P.W.3, produced documents Ex.P.1 to Ex.P.19 to prove his claim. On the side of the respondent, R.W.1 was examined, but no document was produced. On the basis of available evidence on record, the Tribunal found negligence of the 1st respondent vehicle driver alone caused the accident, passed an award for a sum of Rs.7,78,864/- payable by the 1st and 2nd respondents, however, dismissed the petition against 3rd and 4th respondents and exonerated the 5th respondent. Aggrieved over the said finding of the Tribunal, the 1st and 2nd respondents/PWD department has

come forward with the present appeal.

5. Heard the learned counsel for the appellant on the issue of admission of appeal.

6. It is contended by the learned counsel for the appellant/respondents 1 and 2 that the Tribunal wrongly fixed negligence on their jeep driver while the accident occurred due to negligence of the autorickshaw driver in which the Petitioner was travelling. The quantum of the award passed by the Tribunal is highly excessive. The Tribunal ought to have fixed contributory negligence on the auto driver. Thus, the 1st and 2nd respondents/appellants seeks admission of the appeal and also to set aside the award passed by the Tribunal.

7. In the case on hand, before the Tribunal, the Petitioner examined himself as P.W.1 and clearly stated about the manner in which the accident occurred. The Police also registered Ex.P.1-FIR against the 1st respondent jeep driver only. It is evident from Ex.P.8-MVI report that there is no mechanical defect involved in the accident. On the other hand, the 1st and 2nd respondent Department has not examined their driver or any other person before the Tribunal to counter the claim of P.W.1 about the manner in which the accident occurred. In such circumstances, the Tribunal has correctly fixed negligence on the 1st respondent jeep driver. No ground is made out to interfere with the conclusion of the Tribunal on the issue of negligence/liability aspect.

8. The Petitioner has clearly stated about the injuries suffered by him. The following injuries are stated to be suffered by the Petitioner:-

- (i) closed Right clavicle (floating shoulder)
- (ii) Closed R scapula (branchial pluxm)
- (iii) Loss of upper teeth and 2 lower teeth.
- (iv) Lacerated injury of 20 cm x 10 cm over R Paneto region, 4 cm x 3 cm temporal region, lacerated injury of 2 cm x 0.5 cm over eyebrow.
- (v) lacerated wound 5 cm x 5 cm Right Thigh.

The above said injuries is corroborated by Ex.P.2-Accident Register Copy. Further, he has taken treatment as inpatient at different points of time at different hospitals as pleaded in the petition and the same is corroborated by Ex.P.3, Ex.P.6, Ex.P.12 to Ex.P.14, copy of the discharge summary issued by different hospitals. The Petitioner also examined P.W.2 and P.W.3 to prove that he suffered partial permanent disability. The disability certificate issued by them is marked as Ex.P.15 and Ex.P.19. The disability certificate issued by Government of Tamil Nadu is produced as Ex.P.17. It is apparent that the Petitioner lost six tooth and also suffered fracture in his right hand. P.W.2/doctor has assessed the disability at 60% while P.W.3 doctor assessed disability at 15%. Thus, in the

absence of any contra evidence on the side of the respondents, the Tribunal has accepted the evidence of P.W.2 and P.W.3 and fixed the disability of the Petitioner as assessed by them. Having found that the petitioner suffers due to permanent disability which caused him loss of income and also earning capacity, the Tribunal has awarded amounts under different heads as follows:-

Sl. No.	Heads	Amount awarded by the Tribunal
1.	Pain and suffering	30,000/-
2.	Loss of earning during the period of treatment	42,000/-
3.	Loss of future earning power	5,43,864/-
4.	Disability	1,50,000/-
5.	Transport expenses	2,000/-
6.	Nutritious food	2,000/-
7.	Damages caused to clothes and articles	2,000/-
8.	Medical expenses	50,000/-
9.	Attender charges	2,000/-
	Total	7,78,864/-

9. Considering the evidence available on record, this court is of the view that as an agricultural labour and mason aged 32 years, the disability to use his right hand will result in loss of income to the petitioner in future also. Further, the petitioner will also suffer from lack of amenities. In such circumstances, the amount awarded under different heads as stated above is appropriate, just and reasonable and the same does not warrant any interference.

10. As such, no ground is made out by the appellants to interfere with the award passed by the Tribunal. Accordingly, the appeal fails and the same is dismissed at the stage of admission itself. The award dated 22.09.2014 passed in M.C.O.P.No.22 of 2013 by the Motor Accident Claims Tribunal, (Sub-Court), Tiruvarur, is confirmed. The Point is answered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
(Sub-Court), Tiruvarur.

2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr. J.Michal Visuvasam, Advocate, S.R.No. 9656

+lcc to the Special Government Pleader, S.R.No. 9515

C.M.A.No.1435 of 2017

NMI (CO)
GN(23/10/2018)



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