

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29.08.2018

JUDGMENT PRONOUNCED ON : 06.09.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

C.M.A.No.1751 of 2011

Ramachandran Appellant / Petitioner

versus

1.Ramesh

(R1 exparte before Tribunal)

2.The Divisional Manager,

The United India Insurance Co. Ltd.,

No.46, Katpadi Road,

Vellore.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 22.11.2010 passed in M.A.C.T.O.P.No.9 of 2008 on the file of the Motor Accidents Claims Tribunal [Chief Judicial Magistrate], Thiruvannamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondent No.1 : Exparte

For Respondent No.2 :

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J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant [petitioner], challenging the judgment and decree dated 22.11.2010 passed in M.A.C.T.O.P.No.9 of 2008 on the file of the Motor Accidents Claims Tribunal [Chief Judicial Magistrate], Thiruvannamalai.

2. For the sake of convenience, the parties are referred to herein, as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that, on 31.10.2007 at about 01.30p.m., while he was proceeding to his Village in a two-wheeler bearing Registration No.TN-25-C-0097 along with his wife near Vanniyanagaram Koot Road in Thiruvannamalai - Thirukovilur Road, the Car owned by the first respondent bearing Registration No.TN-29-K-5386, came in a rash and negligent manner, dashed against the two-wheeler, due to which, the petitioner sustained grievous injuries. According to the petitioner, the accident occurred only due to the negligence of the driver of the Car. At the time of accident, the petitioner was aged about 55 years and was earning Rs.5,000/- per month, by working as an agricultural labour. It is stated that due to the injury suffered, he is not able to attend his regular work and hence, sought a sum of Rs.5,00,000/- as compensation from the respondents, who are the owner and the insurer of the said Car.

3. On the other hand, opposing the claim of the petitioner, by filing counter, the second respondent [Insurance Company] denied the accident itself and stated that only due to the rash and negligent driving of the injured, the accident occurred. The vehicle driven by the injured is not added as party in the claim petition. The age, avocation and income are also denied. The petitioner has not possessed with valid licence for driving the two-wheeler. The claim of the petitioner is exorbitant and thus, the second respondent sought for dismissal of the claim petition.

4. Before the Claims Tribunal, the petitioner examined himself as P.W.1. Further, the Doctor, who issued disability certificate to the claimant was examined as P.W.2. The claimant produced 8 documents as Ex.P.1 to Ex.P.8 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The first respondent remained exparte.

5. The Claims Tribunal, on the basis of the available records, found that the first respondent Car driver alone caused the accident and passed award for a sum of Rs.65,000/- along with interest @ 7.5% as compensation to the injured [petitioner, Ramachandran] and directed the second respondent to pay the compensation. Aggrieved over the said finding, the

petitioner has come forward with the present Appeal praying to enhance the award amount.

6. When the appeal is taken up for hearing, I have heard the arguments of Mr.F.Terry Chellaraja, learned counsel appearing for the appellant, Mr.S.Arun Kumar, learned counsel appearing for the second respondent and also perused the records carefully.

7. The learned counsel appearing for the petitioner [injured] contends that in the Claims Tribunal Ex.P.7 Permanent Disability Certificate and Ex.P.8 X-ray established that the petitioner suffered permanent disability and due to the said disability, he did not perform the agricultural labour work. Further, the disability sustained by the petitioner is prolonged till his life. Therefore, the Claims Tribunal ought to have calculated the compensation through multiplier method but instead of that, the Claims Tribunal reduced the disability percentage to the level of 20% and awarded meagre compensation. Further, he added the Claims Tribunal has not been awarded compensation for various heads. Accordingly, he sought for enhancing the compensation fixed by the Claims Tribunal.

8. Per contra, the learned counsel appearing for the second respondent [Insurance Company] would contend that all the injuries sustained in the road accident do not result in loss of any earning capacity. In this case, as per Ex.P.4 [Accident Register copy], the petitioner sustained a fracture in the right leg. The said injury do not result in loss of any earning capacity. The Claims Tribunal correctly appreciated the evidence given by the P.W.1 and P.W.2 and thereafter, passed the award. The award amount passed by the Claims Tribunal is just and fair, no interference is required and thus, the second respondent sought for dismissal of the appeal.

9. Admittedly, during of time of occurrence, the petitioner along with his wife travelled in a two-wheeler bearing Registration No.TN-25-C-0097 in the extreme side of the road. Thereafter, the Car owned by the first respondent came behind and dashed against the two-wheeler. Even though the negligence of the driver of the Car is disputed in the Trial Court, Ex.P.5 the copy of the judgment proves that the driver of the Car himself admitted the negligence and paid a fine amount fixed by the learned Judicial Magistrate No.II, Thiruvannamalai.

Accordingly, based on the contents of Ex.P.1 to Ex.P.5 and on the basis of the evidence given by the P.W.1, the Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the Car. So, the finding arrived at by the Claims Tribunal in respect to the negligence is found correct and the said finding of the Claims Tribunal needs no interference. Accordingly, the finding of the Tribunal regarding the negligence aspect is affirmed by this Court.

10. With regard to the other contentions, it is necessary to verify whether the result of the injury will change the life style of the injured and whether, he is not in a position to do the regular work as before the date of accident. In this aspect, before the Claims Tribunal, the Doctor, who issued the disability certificate to the claimant was examined as P.W.2. In other aspects, on the side of the respondent, nothing was suggested about the disability as stated by the P.W.2.

11. It is an admitted fact that after the accident the petitioner was admitted in Government Hospital, Thiruvannamalai. In the Claims Tribunal, Accident Register Copy issued by the Doctor was marked as Ex.P.4. According to the said document, the petitioner sustained the following 4 injuries:

- "[i] Abrasion 1x1cm left knee.
- [ii] 2 Abrasions each 1x1cm left elbow.
- [iii] 2 Abrasions 2x2cm over right ankle.
- [iv] Abrasion 0.5x11.51m over head."

12. Further, he certifies that in the above said injuries except injury no.3, all other are simple in nature. So, in the said circumstances, this Court is not in a position to hold that the injury sustained by the petitioner has reduced the loss of earning capacity. In this regard, in the judgment of our Honourable Apex Court in RAJ KUMAR vs. AJAY KUMAR reported in 2010 [2] TN MAC 581[SC], wherein it has held as follows:

"a. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being.

b. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Permanent Disability can be either partial or total.

c. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation.

d. Partial Permanent Disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity.

e. Total Permanent Disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident."

13. Accordingly, if a person sustained permanent disability and due to the said disability, if he losses the earning capacity entirely, the compensation would be calculated based on the multiplier method.

14. Now, applying the said principles with the case in our hand, there is no evidence adduced on the side of the petitioner to show that he is now losses the earning capacity entirely. Further, considering the nature of injury sustained by the injured, it was not resulted in loss of earning capacity. So, it is not a fit case to calculate the compensation under multiplier method. However, the Claims Tribunal has not awarded compensation on various heads. Further, the Claims Tribunal awarded compensation only the following three heads:

Head	Amount [Rs.]
Transportation, Medical expenses & Future Medical expenses	35,000.00
Pain and Sufferings	10,000.00
Permanent Disability 20%	20,000.00
Total	65,000.00

15. The learned counsel appearing for the petitioner [injured] relied on the judgment of this Court in THE BRANCH MANAGER, UNITED INDIA INSURANCE CO. LTD., vs. M.ETHIRAJULU reported in 2015 [2] TN MAC 454 [DB] and prayed to award compensation under various heads as awarded in the said judgment.

16. Now, on going through the facts the case relied on by the claimant, it appears that the injured in the said case is a labour and was aged about 32 years. The disability Certificate issued by the Doctor established that the accident of disablement would effect the future loss of earning capacity to the extent of 50% of the income. But, the facts of the case in our hand is entirely different, thereby, the prayer sought for by the petitioner cannot be entertained in this case.

17. However, considering the facts and circumstances, this Court is inclined to modify the award amount. In order to prove the disability of the claimant in the Claims Tribunal, the Doctor, who issued the disability certificate was examined as P.W.2. He has stated that the claimant suffered 30% of partial permanent disability. But the Claims Tribunal reduced the disability to the extent of 20% and fixed at Rs.1,000/- as a compensation per percentage of disability, which is not proper. Taking into consideration of the nature of injury, it will be appropriate to award Rs.1,500/- per percentage of disability. So, the compensation for the disablement is calculated as follows:

30% disability x 1500 = Rs.45,000/-.

18. In the Claims Tribunal, Rs.10,000/- was awarded under the head of pain and sufferings. According to Ex.P.4 Accident Register Copy, the claimant sustained 4 injuries, in which, one injury is grievous in nature, thereby, awarding Rs.15,000/- is proper and just reasonable for pain and sufferings. Further, Rs.10,000/- is the appropriate amount for

Transportation. In the Claims Tribunal, there is no amount was ordered under the head of loss of earnings during the period of treatment. Therefore, fixing Rs.10,000/- for the above head appears to be justifiable and accordingly, this Court is inclined to award Rs.10,000/- for the loss of earnings during the period of treatment. Further, it will be appropriate to award Rs.5,000/- each under the head of attendant charges, loss of amenities and extra nourishment. Accordingly, the modified compensation payable to the injured [petitioner, Ramachandran] is as under:

Head	Amount (Rs.)
For 30% Disability [1500 x 30]	45,000.00
Pain and Sufferings	15,000.00
Transportation	10,000.00
Loss of earnings during the period of treatment	10,000.00
Attendant Charges	5,000.00
Loss of Amenities	5,000.00
Extra Nourishment	5,000.00
Total	95,000.00

19. In the result,

[i] The Civil Miscellaneous Appeal is partly allowed;

[ii] The award amount is enhanced to Rs.95,000/- from Rs.65,000/-. The petitioner in M.A.C.T.O.P.No.9 of 2008 is entitled to award amount of Rs.95,000/- [Rupees Ninety Five Thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

[iii] The second respondent [Insurance Company] is directed to deposit the award amount along with accrued interest and cost with a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if

any. On such deposit, the appellant [petitioner, Ramachandran] in this appeal is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sri

To

The Motor Accidents Claims Tribunal
[Chief Judicial Magistrate],
Thiruvannamalai.

+lcc to Mrs.M.Malar, Advocate Sr.61689

C.M.A.No.1751 of 2011

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srg 25/10/2018



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