

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1404 of 2015

S.Sridharan

..Appellant/Petitioner

Vs.

1.C.S.Suresh

2.ICICI Lombard General Insurance Co.Ltd.,
No.84/85, Wall Tax Road
Chennai-3

3.P.Gopalakrishnan

4.The New India Assurance Company Ltd.,
No.45, Moore Street
Chennai-1

..Respondents 1 to 4/
respondents 1 to 4.

Civil Miscellaneous Appeal filed u/s. 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.04.2012 passed in M.C.O.P.No.4155 of 2009 on the file of Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

For appellant : : Ms.D.Selvakumari
for Respondents : : Ms.R.Sree Vidhya for R2.
Mr.R.Sivakumar for R4.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/injured Petitioner, challenging the judgment and decree dated 04.04.2012 passed in M.C.O.P.No.4155 of 2009 on the file of Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 15.05.2009 at 18.45 hours, as the petitioner was travelling with his colleague as pillion rider in a two wheeler bearing Reg.No.TN-02-T-1140 in

Sardar Patel Road from east to west and as they approached Main gate of Raj Bhavan, Chennai, the 1st respondent van bearing Reg.No.TN-20-B-7099 came in the same direction at high speed, driven in a rash and negligent manner, tried to overtake an auto-rickshaw, proceeding ahead of respondent van, dashed against the pedestrian who was crossing the road and after that, the 1st respondent vehicle turned left, dashed against the two wheeler in which the petitioner was travelling, causing him multiple grievous injuries. The accident occurred only due to negligence of the 1st respondent driver. The 1st and 2nd respondents as the owner and insurer of the vehicle are liable to pay the compensation. The Petitioner was aged 42 years and employed in Madras High Court as Assistant Section Officer earning a sum of Rs.18,424/-. The petitioner states that subsequently, he was promoted as Court Officer and drawing Rs.21,600/-. Due to the injuries suffered by him, he could not walk normally and unable to stand for long time. The Petitioner sought for a sum of Rs.9,00,000/- as compensation.

3. On the other hand, opposing the claim of the Petitioner, the 2nd respondent-Insurance company contends that the claim of the Petitioner is exorbitant and the accident did not occur in the manner alleged by the petitioner. The driver of the 1st respondent van does not possess valid driving licence and as such, the 2nd respondent is not liable to pay any compensation. The driver of the auto rickshaw was at fault and contributed to the accident. Thus, the 2nd respondent sought for dismissal of the Petition.

4. The 4th respondent also filed counter contending that the vehicle involved in the accident was not insured with them and the driver did not possess valid driving licence. The claim of the Petitioner is exorbitant. The driver of the vehicle bearing Reg.No.TN-20-B-7099 belonging to the 1st respondent alone was responsible for the accident and the Police have also filed charge sheet against him only. The Petitioner is not entitled to ask for any compensation from the 3rd and 4th respondents who are the owner and insurer of the two wheeler in which the petitioner travelled as there was no negligence on the part of the rider of the two wheeler. Thus, the 4th respondent sought for dismissal of the Petition against them.

5. Before the Tribunal, the Petitioner/S.Sridharan examined himself as P.W.1 and two others as P.W.2 and P.W.3, produced documents Ex.P.1 to Ex.P.27 to prove his claim. Respondents 1 and 3 remained exparte. On the respondents side, R.W.1 and R.W.2 was examined and documents Ex.R.1 to Ex.R.4 was produced.

6. On the basis of the available materials on record, the Tribunal fixed negligence on the part of the 1st respondent

driver and held that 1st respondent driver alone caused the accident and awarded Rs.7,92,000/- as compensation to the injured petitioner and as the driver was not having valid driving licence, directed the 2nd respondent/Insurance company to pay the amount and then to recover the same from the 1st respondent/owner of the vehicle and dismissed the claim against the 3rd and 4th respondent. Being not satisfied with the quantum of the award, the Petitioner/claimant has come forward with the present appeal.

7. The learned counsel for the Petitioner contends that the Tribunal failed to take into consideration that the injury suffered by the Petitioner will prevent him from working properly after retirement. The Tribunal also ought to have applied multiplier '8' for the age group of 55 to 60 as he would face loss of income. Hence, the appellant seeks for enhancement of the quantum of award.

8. Per contra, opposing the claim of the injured petitioner for enhancement, the learned counsel for the 2nd respondent-Insurance company(ICICI) contends that the Petitioner is still employed and there is no evidence to show that he suffered any loss of income or any other difficulty in attending to his day today work. It is also pointed out that in the petition averments itself, it is stated that now he got promoted and earning higher salary than what he was getting as Assistant Section Officer, at the time of accident. The learned counsel further contends that there is no functional disability suffered by the petitioner and as the quantum of the award passed by the tribunal itself is on higher side, there is no need to enhance the same as sought for by the Petitioner. Thus the 2nd respondent seeks dismissal of the appeal.

9. The Petitioner who travelled as Pillion rider belonging to the 3rd respondent clearly stated about the nature of accident that occurred on 15.05.2009. The Police also registered the case as per Ex.P.1-FIR against the driver of the 1st respondent vehicle only. The contents of Ex.P.1 FIR corroborates the oral evidence of P.W.1. On the other hand, there is no contra evidence on the side of the respondents. Therefore, it is clear from the evidence of P.W.1 and contents of Ex.P.1-FIR as well as Ex.R3-Charge sheet, that the accident occurred in the manner alleged by the Petitioner due to negligence of the 1st respondent van driver only.

10. The Petitioner claims that as owner and insurer of the vehicle, the 1st and 2nd respondents are liable to pay compensation. The 2nd respondent-Insurance company counsel contends that the driver of the said vehicle did not possess valid driving licence. As such, they are not liable to pay any

compensation. However, the 1st respondent vehicle was insured with the 2nd respondent as evidenced by Ex.R.2-Insurance Policy.

11. The 2nd respondent contended that the driver of the 1st respondent van was not having valid licence and to prove the same, examined R.W.1 employee attached to RTO office, Chennai South, and also R.W.2 who was working as Legal Officer in the 2nd respondent insurance company. According to R.W.1, the driver of the 1st respondent was negligent and the driver had licence to drive only LMV and MCWG as per Ex.R.1 driving licence and he was not authorised to drive any goods vehicle. P.W.2 deposed that the owner of the vehicle permitting the driver to drive the vehicle without proper licence amounts to violation of Ex.R.2 Policy condition and as such, the 2nd respondent is not liable to pay any compensation.

12. Admittedly, the vehicle was covered under Policy, which is marked as Ex.R.2. It is only violation of policy condition committed by the 1st respondent by permitting the unlicensed person to drive the vehicle. As such, the 2nd respondent cannot escape the liability to pay compensation, but as rightly held by the Tribunal, they are entitled to recover the amount from the owner of the vehicle after complying with the award passed against them.

13. The Petitioner states that he suffered the following injuries:-

"comunited depressed bi condylar fracture left tibia;

ORIP was done for the fractured tibia with bone grafting for communited

depressed Bi condylar fracture;
skin grafting done.

Multiple injuries all over the body."

P.W.2/doctor states that he issued disability certificate Ex.P.27. Admittedly, Ex.P.5 Discharge summary shows that the petitioner had taken treatment as inpatient at Apollo Hospitals from 22.06.2009 to 27.06.2009 for implant removal and then again from 12.07.2009 to 16.07.2009 for removal of external fixator-left leg. P.W.2 doctor stated that the petitioner suffers from shortening of ½ inch left leg than the right leg and assessed the disability at 50%.

14. It is to be noted that the Petitioner continues to serve and got promotion also. So the disability suffered by him cannot be considered as functional disability. Hence, there is no need to apply multiplier method for the disability of 50% assessed by P.W.2 doctor. However, for the fracture and multiple injuries suffered by the Petitioner, it will be appropriate to compensate him at Rs.3000/- per percentage of disability instead of Rs.2000/- fixed by the Tribunal. Therefore, under the head

"Permanent disability", Rs.3000/- x 50% disability = Rs.1,50,000/- is awarded.

15. As far as compensation amount awarded under other heads are concerned, considering the nature of injury, this court is of the considered view that the award of the Tribunal warrants no interference except for the above stated modification in respect of permanent disability. Accordingly, the modified compensation payable to the Injured Petitioner-S.Sridharan is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income	Rs. 1,20,250/-	Rs. 1,20,250/-
2.	Transport to Hospital	Rs. 15,300/-	Rs. 15,300/-
3.	Extra nourishment	Rs. 15,000/-	Rs. 15,000/-
4.	Medical expenses	Rs. 3,62,350/-	Rs. 3,62,350/-
5.	Attender charges	Rs. 29,100/-	Rs. 29,100/-
6.	Loss of amenities of life	Rs. 1,00,000/-	Rs. 1,00,000/-
7.	Pain and suffering	Rs. 50,000/-	Rs. 50,000/-
8.	Permanent disability	Rs. 1,00,000/-	Rs. 1,50,000/-
	Total	Rs. 7,92,000/-	Rs. 8,42,000/-

16. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is enhanced to Rs.8,42,000/- from Rs.7,92,000/-The Appellant in CMA/Petitioner is entitled to award amount of Rs.8,42,000/- [Rupees Eight lakhs forty two thousand only] with 7.5% interest per annum from the date of petition till the date of realisation.

(iii) The 2nd respondent/ICICI Lombard General Insurance company is directed to deposit the enhanced award amount along with accrued interest and cost within a period of six weeks from the date of receipt of a copy of this order, less the amount already deposited, if any, with liberty to recover the same from the first respondent. On such deposit, the appellant in this CMA/Petitioner-S.Sridharan is permitted to withdraw the same, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

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

+1cc to Mr.R.Sivakumar, Advocate SR.No.16119

+1cc to Mrs.R.Sreevidhya, Advocate Sr.NO.17001

+1cc to Mr.T.S.Baskaran, Advocate sR.No.16360

SVI (CO)

sm:26.6.2018

C.M.A.No.1404 of 2015



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