

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1496 of 2017

S.Elumalai ... Appellant/Claimant

...vs...

1.S.Thameem

2.Sri Ram General Insurance Company Ltd.,

No.66, Thirumalai Pillai Road,

T.Nagar, Chennai-600 017. ... Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 29.04.2015 made in MCOP.No.142 of 2012 on the file of the Motor Accident Claims Tribunal/V Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao

For Respondents : Mr.S.Dhakshnamoorthy for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 29.04.2015 made in MCOP.No.142 of 2012 on the file of the Motor Accident Claims Tribunal/V Judge, Court of Small Causes, Chennai, the petitioner/claimant filed this present appeal seeking 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 21.01.2010 at about 19.00 hours, as the petitioner was crossing the Kamarajar Salai, near P.W.D Office Bus stop, towards West to East Direction, the van bearing Registration No.TN-20-W-1942 came at high speed dashed against the petitioner causing him multiple grievous injuries all over his body. The petitioner who was aged about 30 years earned a sum of Rs.500/- per day by working as a mason. Due to the fracture and multiple injuries suffered by

him, he is not able to attend to his normal work. The accident occurred only due to the negligent driving of the first respondent's vehicle driver and as the same was insured with the second respondent Insurance Company, the petitioner contends that both the respondents are liable to pay a sum of Rs.15,00,000/- as compensation.

4. Before the Tribunal, both the respondent remained exparte. To prove his claim, the petitioner examined himself as P.W.1 and medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P15 before the Tribunal.

5. Considering the evidence available on record, the Tribunal found the negligence on the part of the first respondent's vehicle driver alone caused the accident, passed an Award for a sum of Rs.10,00,000/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

6. The learned counsel appearing for the appellant/petitioner contends that he was aged about 30 years suffered head injuries and consequent to the same, he is suffering from frequent fits and related physically discomforts. The Tribunal ought to have fixed the monthly income of the petitioner at Rs.12,000/-, but failed to do so. The Tribunal without any reason reduced the disability suffered by the petitioner from 65% to 50%. The petitioner being a mason is unable to continue his avocation due to the fracture suffered by him and as such the functional disability should be taken as 100%. The amount awarded by the Tribunal under different heads is very meager. Hence, the petitioner seeks to enhance the quantum of award passed by the Tribunal by allowing the appeal.

7. Per contra, the learned counsel appearing for the second respondent/Insurance Company contends that due to their non appearance before the Tribunal, the evidence let in by the petitioner was not contradicted and in such circumstances, the Tribunal relying solely on the basis of petitioner's side evidence fixed the liability on the respondents and passed an award for the higher amount. The said conclusion of the Tribunal is not proper. As such, there is no need or ground made out by the petitioner to enhance the quantum of award passed by the Tribunal. Thus, the second respondent sought for dismissal of this appeal.

8. 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.

9. The petitioner who deposed as P.W.1 stated that as he was trying to cross the Kamarajar Salai, near P.W.D Office Bus stop, the first respondent's van bearing Registration No.TN-20-W-1942 came at high speed and dashed against him. The police also registered Ex.P1 First Information Report against the driver of the first respondent's vehicle only. There is no contra evidence let in by the respondents to contradict the version of the accident given by P.W.1. As such, on the basis of P.W.1's evidence and the contents of Ex.P1 First Information report, it is clear that the accident occurred only due to the negligence of the first respondent's van driver.

10. The petitioner clearly stated that he suffered injuries in his head, Right Posterior Fossa EDH and multiple grievous injuries all over the body. To prove the same, the petitioner produced Ex.P2 Accident Register copy. Admittedly, the petitioner underwent treatment in Government Hospital, Chennai and the same is evidenced by Ex.P3 Discharge Summary. The Doctor, who examined the petitioner and assessed the disability suffered by him deposed as P.W.2 and stated that the petitioner has suffered partial permanent disability. It is clear from the evidence that the petitioner is suffering from frequent loss of consciousness and other related deficiency. It is also proved that he was treated as inpatient from 21.01.2010 to 01.02.2010 and also under went surgery. Ex.P10 Photo and CD clearly prove the serious nature of injuries suffered by the petitioner. Ex.11 and Ex.P12 CT Scan report clearly establish the physical ailments of the petitioner. Further, it is also clear from Ex.P6 O.P. chit that the petitioner is continuously taking treatment. The Doctor, who deposed as P.W.2 on personal examination of the petitioner as well as Ex.P12 C.T. Scan report, Ex.P13 EEG Report and Ex.P14 X-rays, found the disability suffered by the petitioner was 65% and issued Ex.P15 disability certificate. The petitioner being a mason by profession, the injuries suffered by him is found to affect his earning capacity. As such the Tribunal fixed the functional disability of the petitioner at 50% and as the petitioner is aged 30 years, applied the multiplier 18 to calculate the loss of earning capacity of the petitioner. In the absence of any contra evidence on the side of the respondents, the Tribunal has fixed the functional disability of the petitioner at 50% on the basis of P.W.2 oral evidence and Ex.P15 disability certificate issued by him. However, the Tribunal erred in applying the multiplier at 18 instead of 17, which is correct multiplier. The petitioner being a mason and the accident occurred in the year,2010, it will be appropriate to fix his notional monthly income at Rs.7,500/-. Thus, applying the multiplier 17, for 50% loss of earning capacity suffered by the petitioner, the compensation for loss of earning capacity is calculated as follows.

$$\text{Rs.7,500/-} \times 12 = \text{Rs.90,000/-} \times 17 = \text{Rs.15,30,000/-} \times 50\%$$

deduction = Rs.7,65,000/- .

11. Admittedly, the petitioner suffered fracture and multiple injuries and as a mason it would be difficult for him to attend to his work for some time. The Tribunal found that he would have suffered loss of income for 24 months and fixing his notional monthly income at Rs.7,500/- awarded a sum of Rs.1,80,000/- as loss of earning during treatment period. However, this Court is of the view that it is on the higher side and it will be appropriate to compensate for 12 months only for loss of income during treatment period. Thus, the above said amount is reduced to Rs.90,000/-. The Tribunal has awarded a sum of Rs.1,95,000/- towards disability compensation without any proper reason. Hence, the same is unsustainable and as such it is set aside. The amount awarded under other heads appears to be nominal and the learned counsel appearing for the second respondent has no objection for the same. Thus, the same is to be confirmed. Thus, the amount awarded by the Tribunal under the different heads is modified and enhanced as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of earning capacity	4,05,000.00	7,65,000.00
2.	Loss of income during treatment period	1,80,000.00	90,000.00
3.	Transportation & others	50,000.00	50,000.00
4.	Medical Expenses	5,000.00	5,000.00
5.	Disability	1,95,000.00	-
6.	Pain and sufferings	1,00,000.00	1,00,000.00
7.	Loss of Amenities	50,000.00	50,000.00
8.	Attender Charges	5,000.00	5,000.00
9.	Loss of expectancy of life	10,000.00	10,000.00
	Total	10,00,000.00	10,75,000.00

Accordingly, the amount of Rs.10,00,000/- awarded by the Tribunal is enhanced to Rs.10,75,000/-.

12. In the result, this appeal is partly allowed. No costs. The sum of Rs.10,00,000/- awarded by the Tribunal, dated 29.04.2015 made in MCOP.No.142 of 2012 on the file of the Motor Accident Claims Tribunal/V Court, Court of Small Causes, Chennai, is hereby enhanced to Rs.10,75,000/-. The second respondent Insurance Company is directed to deposit the entire enhanced award amount of Rs.10,75,000/- 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. The appellant/petitioner is not entitled to interest for the default period of 416 days.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

rrg

To

1. The V Judge,
Small Causes Court,
Chennai.

2. The Section officer
VR Section, High Court, Madras(2 copies)

+1 CC to Mr.S. Dhakshinamurthy, Advocate sr 28756.

+2 Ccs to Mr.A.N. Viswantha Rao, Advocate sr 28996

C.M.A.No.1496 of 2011

SKV(CO)
SP(29/05/2018)

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