

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.873 of 2011

Duraisamy
S/o Angannan

Appellant/Petitioner

Vs

1. Venkateshwaran
S/o R. Chinna (R1 - exparte before the tribunal)
2. M/s. National Insurance Company Limited
Divisional Office II, Salem Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 18.10.2010 made in MCOP No.1055 of 2005 on the file of Principal Subordinate Judge, Salem

For Appellant : Mr.K. Kuppusamy

For Respondents : M/S.N.B. Surakha for R2
: R1- Ex parte

J U D G M E N T

Aggrieved over the award passed by the Claim Tribunal/Principal Subordinate Judge, Salem in MCOP No. 1055 of 2005, the appellant herein who is the claimant in the claim petition filed this appeal, in which he is seeking relief to enhance the compensation awarded by the Claim Tribunal. In the Claim Tribunal, the appellant had filed the claim petition under Section 166 of Motor Vehicles Act, in which he claimed the compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident happened on 06.10.2005. After elaborate enquiry, the claim Tribunal awarded compensation of Rs.1,06,367/- with interest at the rate of 7.5% per annum, against which the present appeal has been preferred.

2) In the claim Tribunal, the case of the appellant is as follows. On 06.10.2005 at about 2.30pm, when the petitioner was travelling as a load man in the Auto bearing Reg.No. TN 30 E

5531 near Athumedu Bus stop on the Belur - Thumbal main road, the driver of the Auto driven the vehicle in a rash and negligent manner and lost his control, due to which, the said vehicle was capsized in the road side. Due to the said accident, the appellant sustained severe fracture and injury all over the body. He was admitted in Gopi Hospital at Salem. The petitioner is a coolie and he was earning a sum of Rs.4,000/- per month. According to him, as of now, he has got permanent disability and he is not able to attend his regular work. The 1st respondent is the owner of the Auto and the 2nd respondent is the insurer.

3) On the other hand, opposing the claim of the petitioner claimed by the petitioner by filing Counter, the 2nd respondent / Insurance Company denied the accident itself and stated that the appellant is a gratuitous passenger and he is not entitled to claim compensation from the 2nd respondent. The claim of the petitioner about the injury suffered is denied. The age, avocation and income are also denied. According to him, the 1st respondent violated the policy conditions. The compensation claimed by the appellant is an excessive one. Thus, the 2nd respondent sought for dismissal of the claim petition.

4) In the trial court, the 1st respondent remained exparte. Further, the petitioner examined himself as PW 1. The Doctor who issued the Disability Certificate was examined as PW 2. Moreover, the Driver of the Auto was examined as PW 3. Further, on the side of the petitioner, 6 documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondents, as many as 3 witnesses were examined as RW 1 to RW 3 and 3 documents were exhibited as Ex.R1 to Ex.R3. The Tribunal on the basis of available records found that the 1st respondent auto driver alone caused the accident and passed the award for a sum of Rs.1,06,367/- as the compensation to the injured petitioner Duraisamy and directed the 2nd respondent to pay the compensation. Aggrieved over the said findings, the petitioner/appellant has come forward with the present appeal.

5) The learned Counsel appearing for the appellant would contend that the claim Tribunal without looking into the nature of the injuries sustained by the claimant, ordered meager amount as compensation. Further, he added that the compensation awarded by the claim Tribunal is not in accordance with the principles laid down by this Court as well as by the Apex Court.

6) Per contra, the learned Counsel for the 2nd respondent would contend that the Tribunal correctly appreciated the evidence given by either side and passed the award. According to him, the award passed by the claim Tribunal does not need any interference.

7) Admittedly, in this case the petitioner was travelling in a Mini door Auto. Further, he came from a Sandy after selling country jaggars. Further it is an admitted fact that the offending vehicle is light goods vehicle. The evidence of RW 1 to RW 3 proves, the vehicle is insured with the 2nd respondent. Further, he issued Commercial Vehicle packaging policy to the offending vehicle.

8) In the said circumstances, it is necessary to find out whether the claimant is an unauthorized passenger, and the 2nd respondent is liable to pay the compensation fixed by the Claim Tribunal. In the Claim Tribunal, it was held that previous to the accident, the claimant after hiring the auto carries country jaggars to Salem Shevapet Shandy and after unloading the same, when he was returning to his native place with the empty gunny bags, bamboo baskets, the accident had happened. The evidence given by PW 1 in this regard is not disputed on the side of the respondents. Further, the claim Tribunal held only because of the reason, since the claimant is travelling in an Auto for selling the goods, he is entitled to claim the compensation from the respondents. It is true that the evidence given by PW 1 in respect of hiring of the Auto for selling of country jaggars in Salem Shevapet Shandy and about the returning in the same Auto along with empty gunny bags and bamboo baskets are not disputed on the side of the respondent. Thereby, I am of the opinion that at the time of accident, the claimant is not a gratuitous passenger in the Auto. The claim Tribunal has rightly decided the said issue and came to the conclusion that the respondents are being the owner and the insurer of the vehicle jointly and severally liable to pay the compensation.

9) With regard to the quantum of the compensation fixed by the claim Tribunal, the learned counsel appearing for the 2nd respondent would not make any objection in respect to the evidence given by PW 2. According to the evidence given by PW 2, the claimant suffers the permanent partial disability to the tune of 30%. The claim Tribunal has also considered the evidence given by PW 2 and hold that the percentage of disability is 30%. In this regard, it is an admitted fact that after the accident, the petitioner sustained injury including the fracture in the right fibula bone. So conclusion arrived by the claim Tribunal is correct and this Court also affirms the findings of the claim Tribunal. In the claim Tribunal, Rs.1,000/- was awarded per percentage of disability. In this connection, it is necessary to see as per the evidence of PW 1, he was taking treatment nearly for a month. Further, as per the evidence of PW 2, the claimant is not able to do his duty as a normal man, the doctor further deposed after the occurrence, a surgery was performed to the claimant. Thereby, considering the above circumstances, it is appropriate to fix Rs.1500/- per percentage

of disability. Accordingly, the claimant is entitled to Rs.45,000/- under the head of permanent partial disability, the tribunal has awarded Rs.15,000/- under the head of pain and sufferings, now according to the learned Counsel for the appellant the amount awarded under the head of pain and suffering is very meager. In this petition, as per the evidence of PW 1, he was taking treatment continuously for the period of one month. Further, he is the agriculturalist. So considering the nature of work performed by the claimant, this Court is inclined to modify the same to the tune of Rs.25,000/- as compensation under the head of pain and suffering. Further, in respect to the transport charges, the claim Tribunal awarded Rs.1000/-. The said amount fixed by the Claim Tribunal is very meager. Thereby, Rs.5,000/- was fixed under the head of transportation. In otherwise, the claim Tribunal did not allow any amount under the head of attender's charges. According to the evidence given by PW 1, he was admitted in the hospital for a period of 22 days. So, awarding Rs.5,000/- under the head of attender's charges is a reasonable one. The compensation awarded under the other heads like loss of amenities, medical expenses, extra nourishment and loss of income is unaltered. Accordingly, the modified compensation payable to the injured Duraisamy is as follow.

SL.NO	PARTICULARS	Awarded by the Claim Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
1.	Towards permanent partial disability (Rs.1500 x 30%)	30,000.00	45,000.00
2.	Towards pain and sufferings	15,000.00	25,000.00
3.	Towards transportation	1,000.00	5,000.00
4.	Towards Attender's charges	-	5,000.00
5.	Towards medical expenses	44,367.00	44,367.00
6.	Towards extra nourishment	5,000.00	5,000.00
7.	Towards loss of amenities	5,000.00	5,000.00
8.	Towards loss of income	6,000.00	6,000.00
Total		1,06,367.00	1,40,367.00

10) Hence, the compensation arrived by the Claim Tribunal is modified to the extent of Rs.1,40,367/- . The rate

of interest awarded by the Claim Tribunal 7.5% per annum is unaltered. The 2nd respondent Insurance Company is directed to pay the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

11) In the result, the Civil Miscellaneous appeal is disposed of. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

vrn

To

The Motor Accident Claims Tribunal,
Principal Subordinate Judge, Salem.

Copy To: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K.Kuppusamy, Advocate SR.No.70704

+1cc to Mr.N.B.Surekha, Advocate SR.No.70093

Civil Miscellaneous Appeal No.873 of 2011

RJ(CO)
GMY(31/01/2019)

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