

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1987 of 2016
and

Civil Miscellaneous Appeal No.617 of 2017

M.Manikandan Durairaj @ Manikandan ... Appellant in CMA 1987/16
1st Respondent in CMA 617/17

...vs..

1.A.George ...1st Respondent in CMA.1987/16
2nd respondent in CMA 617/17

2.The Manger,
Oriental Insurance Co. Ltd.,
Motor Third Party Claims, HUB,
No.216, Prakasam Salai, Broadway,
Chennai-600 108. ...Respondent in in CMA 1987/17
Appellant CMA NO.617/ 2017

This Civil Miscellaneous Appeals has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 06.06.2016 made in MCOP.No.2334 of 2014 on the file of the Motor Accident Claims Tribunal/III Judge, Court Small Causes, Chennai.

For Appellant : Mr.M.Swamikkannu
(Appellant in CMA.No.1987/2016 &
first respondent in CMA.617/2017)

For Respondents : Mr.M.Krishnamoorthy
(Appellant in CMA.No.617/2017 and
respondent in CMA.1987/2016)

C O M M O N J U D G M E N T

Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant in MCOP.No.2334 of 2014 filed CMA No.1987 of 2017 and aggrieved over the finding of the Tribunal, the second respondent/Insurance Company in MCOP.No.2334 of 2014 filed CMA.No.617 of 2017.

2. For 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 22.03.2014, at about 18.00 hours, while the petitioner was riding his motor cycle bearing Registration No.TN-23-AY-6007 in Tambaram - Vanakaram Bye Pass Road, from south to north, the first respondent owned car bearing Registration No.TN-07-AV-1499, came at high speed in the opposite direction and dashed against the petitioner motor cycle. As a result of which, the petitioner has fallen down and sustained multifarious fractures and injuries all over his body. He also suffered dislocation of the hip bone and internal injuries in chest and skull, apart from several other injuries all over the body. The accident occurred due to the negligence of the first respondent car driver only. At the time of accident, the petitioner was aged about 23 years and worked as sales executive in a private company, earning a sum of Rs.8,000/- per month and other incentives. Due to the injuries suffered by him, he is not able to attend to his avocation as he used to be. Hence, the petitioner seeks compensation of Rs.16,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent/Insurance Company filed a detailed counter stating that the manner of the accident is to be proved by the petitioner. The driver of the offending vehicle was not having any valid licence. The first respondent car does not possess effective permit and fitness certificate to operate as a commercial vehicle. Further, the petitioner has to prove the car bearing Registration No.TN-07-AV-1499 was involved in the accident. The accident occurred only due to the negligence of the petitioner and as such the second respondent is not liable to pay any compensation. Hence, the second respondent/Insurance company seek dismissal of the claim petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert was examined as P.W.2 and produced documents Ex.P1 to Ex.P13 to substantiate his claim. On the side of the respondents, neither oral evidence nor documentary evidence was produced.

6. The Tribunal, on the basis of available materials on record found the driver of the first respondent car alone is responsible for the accident and awarded a sum of Rs.2,73,500/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the second respondent Insurance Company has preferred the appeal in CMA.No.617 of 2017, where as, not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed the appeal in CMA.No.1987 of 2016.

7. I have heard the learned counsel appearing on either side and perused the materials available on record.

8. The learned counsel appearing for the second respondent/Insurance Company contends that the Tribunal wrongly assessed the permanent disability and awarded exorbitant sum as compensation as it failed to consider the percentage of disability suffered by the petitioner properly. The Tribunal also failed to consider the fact that the proper receipt has not been produced for medical expenses incurred. The admission of P.W.1 in his evidence that the medical bill was settled for Rs.95,000/- was over looked. The Tribunal has awarded excess amount under various heads. Hence, the second respondent Insurance Company seeks to set aside the award passed by the Tribunal by entertaining the appeal filed by them.

9. On the other hand, the learned counsel appearing for the petitioner/claimant contended that the Tribunal has awarded very nominal amount under the different heads. The Tribunal also failed to consider the disability suffered by the petitioner properly and also fixed the monthly income very low. The award passed by the Tribunal needs enhancement. Hence, the petitioner seeks to entertain the appeal by him and enhance the award amount.

10. Both the appeals have been filed basically on the issue of quantum of award only. While the petitioner/claimant is aggrieved that the Tribunal has awarded lesser amount as compensation, the second respondent/insurance company feels that the award passed by the Tribunal is on the higher side. Hence, the issue to be decided is basically as to whether the award passed by the Tribunal is properly arrived at or not?

11. As far as the negligence on the part of the first respondent car driver is concerned, it is clearly established before the Tribunal by the evidence of P.W.1, the petitioner herein. Further, Ex.P1 First Information Report is laid against the driver of the first respondent car. As such in the absence of any contra evidence let in by the respondents about the manner of accident, on the basis of P.W.1 evidence and Ex.P1 FIR, it is clearly established that the negligence of the first respondent car driver alone is responsible for the accident.

12. The petitioner produced the accident register copy issued by the Government Hospital, Chennai as Ex.P4 and the discharge summary issued by the private hospital is produced as

Ex.P5. It is evident from the same, that the petitioner underwent treatment for fracture in both bones in his left leg. It is also evident from Ex.P5 Discharge Summary, the petitioner took treatment as inpatient from 22.03.2014 to 26.03.2014. Thus, the petitioner was in hospital for 5 days. P.W.2, the Doctor who examined the petitioner and assessed the disability, stated that Ex.P13 Xray taken by him and as per his assessment, the total permanent disability of the petitioner is 30%. The disability certificate issued by him is produced as Ex.P12. According to him, there is a fracture of both bones in the left leg and there is malunion of the said bone. However, P.W.2 has not given treatment to the petitioner but he has done personal assessment of the petitioner, and fixed the disability at 30%. However, P.W.2 Doctor has not stated anything in his evidence about the petitioner suffering functional disability which will restrict him from performing his job as sales executive. In such circumstances, the Tribunal assessed the disability suffered by the petitioner at 25% and assessed the compensation of disability at the rate of Rs.3,000/- per percentage and awarded a sum of Rs.75,000/- under the head of permanent disability. The same is seriously disputed by the second respondent insurance company.

13. Further, the petitioner claim that by working as sales executive in private concern, he was earning a salary of Rs.8,000/- per month + incentives. The petitioner produced his Bank Pass Book as Ex.P10 to prove the same. As per the records, it appears that the petitioner has received a sum of Rs.7,549/- as salary for the month of September, 2015. Considering the nature of injuries suffered by him and the malunion of the fracture bone, the petitioner could not have attended to his work for two months. Hence, for the loss of income during treatment period and rehabilitation, it will be appropriate to give two months salary of Rs.15,098/- as loss of income. The petitioner having suffered fracture and under went surgical treatment, he would have suffered mentally and physically. Hence for pain and suffering undergone by him Rs.25,000/- is to be allotted and for loss amenities Rs.10,000/- allotted. The petitioner having been treated as in patient for 5 days and thereafter he was taking treatment for fracture of multiple injuries, he should be provide attender charges. Hence, a sum of Rs.5,000/- is provided for attender charges and a sum of Rs.10,000/- allotted for Transport charges. The petitioner has produced Ex.P8 Medical bills to claim a sum of Rs.1,41,817.75 towards medical expenses. However, it is pointed out by the learned counsel for the second respondent that the total bill amount was only Rs.1,09,605/-. Further, the petition para 5 of the proof affidavit of P.W.1, it is admitted that the medical bill was settled for Rs.95,000/-. Considering the same, it is clear that the petitioner is entitled for only Rs.95,000/- towards medical expenses incurred

by him. In such circumstances, the award passed by the tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income during treatment	7,549.00	15,098.00
2.	Attender charges	1,080.00	5,000.00
3.	Permanent disability	75,000.00	75,000.00
4.	Transport charges	2,000.00	10,000.00
5.	Medical Bills	1,41,817.75	95,000.00
6.	Extra nourishment	10,000.00	10,000.00
7.	Pain and suffering	25,000.00	25,000.00
8.	Damages for mental and physical shock	10,000.00	-
9.	Loss of amenities	-	10,000.00
10.	Damage to cloths	1,000.00	-
	Total	2,73,446.75	2,45,098.00

Accordingly, the total sum of Rs.2,73,446.75/- awarded by the Tribunal is reduced to Rs.2,45,098/- and the same is rounded to Rs.2,45,100/-.

14. In the result, the C.M.A.No.617 of 2017 is partly allowed. No costs. The C.M.A.No.1987 of 2016 is dismissed. No costs. The total sum of Rs.2,73,446.75/- awarded by the Tribunal in M.C.O.P.No.2334 of 2014 dated 06.06.2016 on the file of the MACT/III Judge, Court of Small Causes, Chennai, is reduced to Rs.2,45,100/-. The appellant/Insurance company is permitted to withdraw the excess amount deposited before the Tribunal along with proportionate interest thereon. The petitioner/claimant is permitted to withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

rrg

To,

The III Judge, Court of Small Causes,
The Motor Accident Claims Tribunal
Chennai.

+1cc to Mr.Krishnamoorthy, Advocate, S.R.No.10142

+1cc to Mr.M.Swamikkannan, Advocate, S.R.No.10043

C.M.A.No.1987 of 2016

C.M.A.No.617 of 2017

RSI (CO)

RRK(18/05/2018)



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