

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2093 of 2015

and

M.P.No.1 of 2015

The Divisional Manager,
M/s. National Insurance Co.Ltd.,
No.33,Promenade Road,
Cantonment, Trichy - 1.

..Appellant/2nd Respondent

vs

1.Sheik Muhaideen

..1st Respondent/Claimant

2.V.Rajkumar

..2nd Respondent/1st respondent

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act 1988 against the decree and judgment passed in M.C.O.P.No.508 of 2014, dated 10.03.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Perambalur - District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.Gobinath for R1

J U D G M E N T

Aggrieved over the finding of the Tribunal, dated 10.03.2015 made in M.C.O.P.No.508 of 2014, dated 10.03.2015 on the file of the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Perambalur - District, the second respondent/Insurance Company has filed this present appeal to set aside the order passed by the Tribunal.

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 01.08.2014, at about 6.00 a.m, where in the petitioner was riding his two

wheeler bearing Registration No.TN-55-AB-7908, from west to east, in Pudukottai - Madurai main road near PLA roundana, The first respondent's lorry bearing registration No.TN-45-K-1071, came at high speed in a rash and negligent manner, from north to south and dashed against the two wheeler in which the petitioner was travelling causing fracture over the left leg and grievous injuries all over the body. The accident occurred only due to negligence of the first respondent driver. At the time of the accident, the petitioner was aged about 25 years and working as a driver earning a sum of Rs.10,000/- per month. Due to the grievous injuries suffered by him, he suffered permanent disability and he is unable to attend his normal avocation. Hence, the petitioner seeks compensation of Rs.10,00,000/- 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 filing counter contending that the petitioner alone is responsible for the accident and not the driver of the first respondent's lorry. On the fateful day, the petitioner who was riding his two wheeler in Pudukottai- Madurai main road, suddenly crossed the road without noticing the on coming vehicle, immediately the driver of the first respondent's lorry, applied sudden break and stopped the vehicle, but dashed against the two wheeler of the petitioner. The accident occurred only due to the negligence of the petitioner. As such, the respondents are not liable to pay any amount as compensation. Thus, the second respondent seeks dismissal of the petition.

5. Before the tribunal, the petitioner was examined as P.W.1 and Medical expert as P.W.2 and produced documents Exs.P1 to P.13 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, after considering the material available on record, found that the first respondent lorry driver only responsible for the accident and awarded a sum of Rs.9,34,963/- (Rupees nine lakhs thirty four thousand nine hundred and sixty three only) as compensation to the petitioner payable by the respondent herein. Aggrieved over the finding of the Tribunal, the second respondent-Insurance Company has come forward with the present appeal seeking to set aside the same.

7.The learned counsel for the second respondent/Insurance Company contented that the Tribunal failed to fix the negligence of the petitioner alone caused the accident and not the

negligence of the respondent's lorry driver. The evidence of P.W.2, Doctor who assessed of disability suffered by the petitioner at 55% is not acceptable. The Tribunal assessed the income of the petitioner at Rs.6,000/- (Rupees six thousand only) per month and the same is not proper and the amount awarded under various head is on the higher side. Hence, he seeks to entertain the appeal and set aside the order passed by the Tribunal.

8. Per contra the learned counsel appearing for the petitioner contended that the accident occurred only due the negligence of the driver of the first respondent lorry and the tribunal has properly appreciated the evidence available on record, awarded compensation to the petitioner and the same needs no interference. Hence, the petitioner sought for dismissal of the appeal.

9.I have heard the rival submissions and perused the materials available on record.

10. The contention of the petitioner is that while he was riding his two wheeler, the lorry owned by the first respondent came at high speed and dashed against his two wheeler resulting in grievous injuries to him. The petitioner examined himself as P.W.1, and he has stated about the manner in which the accident occurred. He also produced a copy of the First Information Report, filed against the driver of the first respondent's lorry driver. The petitioner also produced his driving license as EX.P6 to show that he had license to drive the vehicle. On the other hand, to contradict his oral evidence and Ex.P1 copy of F.I.R., the respondent has not chosen to examine the driver of the offending vehicle or any other person before the tribunal. In such circumstances, on the basis of the oral evidence of the P.W.1 and the contents of EX.P1 FIR, it is appropriate to fix the negligence on the part of the first respondent lorry driver alone as cause for the accident. Hence, the finding of the tribunal is just and proper.

11.The petitioner who deposed as P.W.1 stated that the offending vehicle was owned by the first respondent and insured with the second respondent as evidenced by EX.P8 Insurance Policy. The petitioner also produced the copy of the first respondent driver's license as Ex.P9 and registration certificate of the said lorry as EX.P7. As such the fact of the first respondent lorry was insured with the second respondent is not denied further it is pointed out that the driver of the offending vehicle was having valid license and he alone was

responsible for the accident. As such the respondents herein, who are the owners and Insurers of the said vehicle are jointly and severally liable to pay compensation to the petitioner.

12.The petitioner who suffered injuries in the accident, while deposing as P.W.1 stated that he was aged about 25 years at the time of accident and he was employed in private concern earning Rs.10,000/- per month. He also produced Ex.P2 accident register, Ex.P3 Discharge Summary and Ex.P4 Wound certificate to show that he suffered grievous injuries in the accident. It is evident from Ex.P3 discharge summary issued by Medical College Hospital, Thanjavur, that the petitioner underwent treatment for grievous injuries. The petitioner also examined P.W.2 Doctor, who assessed the disability of the petitioner at 55% and issued disability certificate marked as EX.P11. Further P.W.1 also produced the cash sheet as Ex.P13 and X-ray as Ex.P12. It is evident from the evidence of P.W.2 Doctor that the petitioner has suffered two fractures in the left leg for which he underwent surgical treatment. According to P.W.2, the left leg of the petitioner is short by 3 c.m., and the bones have malunited.

13.The petitioner claims that he is not fit to work due to the injuries suffered by him, further it is clear from the evidence of P.W.2 Doctor and the documents produced by the petitioner that he is suffering from permanent disability. Taking into consideration the entire evidence available on record, the permanent disability suffered by the petitioner is fixed at 45%.

14.Even though the petitioner has claimed his earning was Rs.10,000/- per month, by working as a driver, no proof of his avocation as well as income has been produced. Hence, his monthly income is fixed at Rs.9,000/-. As the petitioner was aged 25 years at the time of the accident, the correct multiplier to be applied is 17. As stated in preceding paragraph, the permanent disability fixed by this Court at 45% shall also be taken into consideration while arriving at "loss of earning in future due to permanent disability". Accordingly, the loss of earning due to the permanent disability suffered by the Petitioner is calculated as under:-

$$\text{Rs.9,000} - 1/3^{\text{rd}} \text{ deduction}(3000) = \text{Rs.6,000/-}$$

$$\text{Rs.6000/-} \times 12 \times 17 \times 45/100 = \text{Rs.5,50,800/-}.$$

Thus, a sum of Rs.5,50,800/- is granted by this Court under the head "loss of earning".

15. Further, this Court is of the view that the compensation awarded by the Tribunal under the head Transport Expenses and Attender Charges at Rs.3,000/- each is very low. Hence, the same is enhanced and this Court is inclined to award Rs.15,000/- under the head "Transport Expenses" and Rs.15,000/- under the head "Attender Charges". Considering the fact that the petitioner would have undergone pain and suffering due to the grievous injuries caused to him and suffered loss of comfort due to loss of income consequent to the accident, it will be appropriate to award Rs.30,000/- under the head "Pain and Suffering" and also Rs.20,000/- under the head "Loss of Amenities". Thus the modified compensation granted by this Court is as follows:-

Sl. No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earning	Rs. 9,18,000/-	Rs. 5,50,800/-
2	Medical Expenses	Rs. 10,963/-	Rs. 10,963/-
3	Travel Expenses	Rs. 3,000/-	Rs. 15,000/-
4	Attender Charges	Rs. 3,000/-	Rs. 15,000/-
5	Extra Nourishment	...	Rs. 15,000/-
6	Loss of Amenities	...	Rs. 20,000/-
7	Pain and Suffering	...	Rs. 30,000/-
8	Total	Rs. 9,34,963/-	Rs. 6,56,763/-

16. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award passed by the Tribunal is modified and reduced from Rs. 9,34,963/- to Rs.6,56,763/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) In view of the above modified award amount, the appellant respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

(v) There shall be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

stm

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal
Perambalur - District.

2. The Section Officer,
V.R.Section, High Court, Madras. (2 Copies)

+1cc to Mr.T.Gobinath, Advocate, S.R.No.8815

+1cc to Mr.J.Chandran, Advocate, S.R.No.9809

C.M.A.No.2093 of 2015

SV(CO)
CS/13/04/18

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