

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.07.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2286 of 2015

The Branch Manager,
M/s.Oriental Insurance Company Ltd.,
3-L, Siddha Veerappa Chetty Street,
Dharmapuri Town,
Dharmapuri Taluk & District. Appellant/2nd respondent
...vs..

1.N.R.Narasimhan ... 1st Respondent/Petitioner
2.G.Sivaguru ... 2nd Respondent/1st Respondent

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 13.04.2015 made in MCOP.No.700 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Court), Dharmapuri.

For Appellant : Mr.S.Manohar
Respondents : Mr.M.Selvam for R-1
R2-Remained Exparte in
Lower Court.

JUDGMENT

Aggrieved over the findings of the Tribunal, dated 13.04.2015 made in MCOP.No.700 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Court), Dharmapuri, the present appeal has been filed by the 2nd respondent Insurance Company to set aside the award passed by the Tribunal.

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 27.08.2011 at about 7.45 p.m., while the petitioner, along with his brother was returning home, as pillion rider in the two wheeler bearing Registration No.TN-29-AA-6799, driven by his brother Murugan, while going near Unkarana Alli Mariamman Temple, in front of Nagesh Plastic Paper Mill, in Eamakuttiyur - Madheimangalam

Road, the first respondent Tractor bearing Registration No.TN-30-V-8452, which is insured with the second respondent, came in a rash and negligent manner, dashed against the two wheeler in which the petitioner was going causing him multiple grievous injuries all over his body. The petitioner suffered fracture in his right thigh and right foot. He took treatment at Government Hospital, Dharmapuri and thereafter as inpatient in Ganga Hospital, Coimbatore from 28.08.2011 to 09.09.2011. He underwent surgical treatment to correct the broken right side thigh bones. The accident occurred only due to the negligence of the first respondent Tractor driver. At that point of time, the petitioner was aged 46 years and was employed as Headmaster in the Panchayat Union Primary School, earning a sum of Rs.27,976/- per month. Due to the injuries suffered, he is not in a position to attend to his normal avocation. Thus, the petitioner sought for a sum of Rs.10,00,000/- as compensation 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 by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The accident occurred due to the negligence of the two wheeler rider only. The First Information Report was registered two days after the occurrence. The rider of the two wheeler was not having valid driving licence. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and medical expert as P.W.2, produced documents Ex.P1 to Ex.P8 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent Tractor driver only caused the accident, passed an award for a sum of Rs.5,30,425/- as compensation to the petitioner. Aggrieved over the said findings of the Tribunal, the second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the appellant/2nd respondent Insurance Company and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/2nd respondent Insurance Company contends that the Tribunal after holding that the Tractor driver did not possess valid driving licence, wrongly directed the Insurance Company to pay the compensation and recover the same from the owner instead of

exonerating the second respondent-Insurance Company. The Tribunal failed to appreciate that the rider of the two wheeler also contributed to the accident. The amount awarded by the Tribunal under different heads is highly excessive. The petitioner/claimant re-joined his duty only after found fit by the Medical Board. Hence, there is no loss of income for the petitioner. Thus, the second respondent-Insurance Company sought for setting aside the Award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that the accident occurred only due to rash and negligent driving by the first respondent Tractor driver and as such the petitioner is entitled to seek compensation from the respondents who are the owner and insurer of the offending vehicle. The Award passed by the Tribunal is based on proper appreciation of the evidence and there is no ground made out to interfere with the same. Thus, the petitioner/claimant sought for dismissal of the appeal.

10. According to the petitioner/claimant, while he was going as a pillion rider in the two wheeler bearing Registration No.TN-29-AA-6799, the first respondent Tractor, which came in the opposite direction, driven in a rash and negligent manner, dashed against the two wheeler causing him multiple grievous injuries. The Police also registered EX.P1 First Information Report against the first respondent Tractor driver only. Thus, P.W.1 has clearly stated about the first respondent Tractor coming in a rash and negligent manner causing the accident corroborates with the contents of Ex.P1 First Information Report. The same will clearly prove that the negligence of the first respondent Tractor driver alone caused the accident.

11. On the other hand, the respondent has not let in any oral or documentary evidences to disbelieve the petitioner's claim. Even the driver of the first respondent Tractor was not examined before the Tribunal. As such, the conclusion of the Tribunal on the available evidence, the negligence of the first respondent Tractor driver alone caused the accident is perfectly proper and the same needs no interference.

12. The petitioner who deposed as P.W.1 stated that he suffered fracture on his right leg thigh, fracture on his right leg foot and multiple injuries all over the body. He produced the wound certificate as Ex.P2 to prove the injuries suffered by him. The petitioner underwent treatment as inpatient from 28.08.2011 to 09.09.2011 in Ganga Hospital, Coimbatore and the same is established by Ex.P3 Discharge summary. The petitioner stated that he was employed as Headmaster in Panchayat Union Primary School, earning a sum of Rs.27,976/- per month. Due to

the injuries suffered, he is unable to carry on his work in normal manner. However, there is no evidence to show that the petitioner has suffered loss of promotion or decrease in monthly salary. However, it is clear from the evidence of P.W.1 and Ex.P2 wound certificate that the petitioner has suffered multiple fracture and grievous injuries.

13.The petitioner stated that due to the injuries suffered, he finds it difficult to carry on his day to day work and consequently he is suffering basic amenities of life. P.W.2 Doctor, who examined the petitioner and issued Ex.P7 disability certificate after analyzing Ex.P8 X-ray, deposed that on 10.03.2015 after examining the petitioner and taking Ex.P8 X-rays, he found that the thigh bone of the petitioner has mal-united and due to that the functioning of petitioner's right thigh and right knee function is reduced. P.W.2 also stated that the petitioner will find it difficult to stand or walk for long time and he cannot sit down. Thus, P.W.2 stated that the petitioner has suffered 55% disability. It is clear from the evidences of P.W.1 and P.W.2 that due to the fracture and other grievous injuries suffered, the petitioner is finding it difficult to stand or walk for long time. As such, P.W.2 assessed the permanent disability at 55%. As stated earlier, there is no contra evidence on the side of the respondent. In such circumstances, keeping in mind the above said oral and documentary evidence on the side of the petitioner, it will be appropriate to accept the disability assessed by P.W.2 Doctor. In the absence of any contra evidence. Further, the petitioner also relied upon the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] and 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,] in support of his contention. Following the above said ruling, the assessment of the disability by P.W.2 is to be accepted and accordingly the disability suffered by the petitioner is fixed at 55% instead of 40% fixed by the Tribunal.

14.The petitioner has stated earlier, he was employed as Headmaster in Panchayat Union Primary School. There is no evidence to show that the petitioner was denied any promotion or suffered loss of increment. Likewise, there is nothing on record to show that the future prospects of the petitioner is affected because of the injuries suffered. There is no evidence to prove that the petitioner is suffering from functional disability. As such, the Tribunal was not justified in adopting the multiplier method to assess the loss of earning capacity and the compensation for disability suffered by the petitioner. The petitioner is entitled for compensation only on percentage basis. Since the accident occurred during 2011, it will be appropriate to compensate the petitioner at the rate of Rs.3000/per percentage. Thus, the permanent disability compensation is

calculated as follows:-
Rs.3,000/- x 55% = Rs.1,65,000/-.

15. The Tribunal awarded a sum of Rs.14,000/- as the loss of income for two months during treatment period. However, there is no proof that the petitioner was on leave without any pay. Further, the monthly salary of the petitioner is stated to be Rs.27,976/- per month. In such circumstances, the amount provided towards loss of income for two months by the Tribunal is not based on any evidence and not assessed correctly. As such, the amount awarded towards loss of income during treatment period is set aside. The Tribunal considering the fact that the petitioner suffered partial permanent disability and underwent treatment for a length of time, provided a sum of Rs.30,000/- towards pain and sufferings. However considering the nature of injury, the same is hereby reduced to Rs.20,000/-. The Tribunal provided a sum of Rs.10,000/- towards Medical Expenses, a sum of Rs.5,000/- towards Transportation, a sum of Rs.10,000/- towards extra-nourishment and a sum of Rs.5,000/- towards attender charges. The same are just and proper and there is no need to alter the same. The Tribunal provided for a sum of Rs.20,000/- towards mental agony. Pointing it out, the learned counsel appearing for the appellant Insurance Company contended that there is no need for any compensation under the head of mental agony. The same is acceptable. However, the petitioner has suffered permanent disability and as stated by P.W.2 Doctor the petitioner finds it difficult to sit down and to walk for long distance and even stand continuously for short duration. As such, it will be appropriate to provide for loss of amenities. Thus, the petitioner is awarded a sum of Rs.20,000/- towards loss of amenities. The petitioner took treatment as inpatient in the private Hospital from 28.08.2011 to 09.09.2011 and thereafter he was taking treatment as out patient. Having suffered multiple fracture, the petitioner will need the service of attender at least for a period of two months. Thus, it will be appropriate to provide him a sum of Rs.20,000/- towards attender charges instead of Rs.5,000/- provided by the Tribunal. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Permanent disability	4,36,425.00	1,65,000.00
2.	Pain and sufferings	30,000.00	20,000.00
3.	Transportation	5,000.00	5,000.00
4.	Extra-nourishment	10,000.00	10,000.00

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
5.	Loss of income during treatment	14,000.00	-
6.	Loss of amenities	-	20,000.00
7.	Attender Charges	5,000.00	20,000.00
8.	Medical Bills	10,000.00	10,000.00
9.	Mental agony	20,000.00	-
	Total	5,30,425.00	2,50,000.00

Accordingly, a sum of Rs.5,30,425/- Awarded by the Tribunal is modified and the same is reduced to Rs.2,50,000/-.

16. In the result, this appeal is partly allowed. No costs. The amount of Rs.5,30,425/- awarded by the Tribunal dated 13.04.2015 made in MCOP.No.700 of 2014 on the file of the Motor Accident Claims Tribunal/(Special Sub Court), Dharmapuri is reduced to Rs.2,50,000/-. The appellant/Insurance Company is directed to deposit the entire Award amount of Rs.2,50,000/- 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. The Appellant-Insurance company is entitled to withdraw the excess amount, if any paid. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rrg

To
Special Sub Judge,
The Motor Accident Claims Tribunal,
Dharmapuri.

WEB COPY

COPY TO
The Section Officer,
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.M.SELVAM, Advocate, S.R.No.42675
+1cc to Mr.S.MANO HAR, Advocate, S.R.No. 42820

C.M.A.No.2286 of 2015

NA (CO)
TR(30/07/2018)



WEB COPY