

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2298 of 2015

S.Thomas

... Appellant/Petitioner

Versus

1.VST Motor Ltd.,
No.104, Q Block, 3rd Avenue,
Anna Nagar, Chennai-600 040.

2.The New India Assurance Company Ltd,
Motor Third Party Claim Office,
No.45, Moore Street,
V Floor, Chennai-1. ...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 23.06.2015 made in M.C.O.P.No.2995 of 2013 on the file of the Motor Accident Claims Tribunal cum VI Small Causes, Chennai.

For Appellant : Mr.C.Richard Suresh Kumar

For Respondents : Mr.J.Chandran [for R2]

J U D G M E N T

The appellant has filed this appeal against the judgment and decree dated 23.06.2015 made in M.C.O.P.No. 2995 of 2013 on the file of the Motor Accident Claims Tribunal cum VI Small Causes, Chennai.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 22.03.2012 at about 7.00 hours when the petitioner was riding his motor cycle bearing Registration No.TN-22-BA-3853 from Thambaram to Mogappair near Balamurugan Theatre in Redhills in Poonamallee High Road, the 1st respondent car bearing temporary Registration No.TN-02-/TC-0002/2012 came at high speed in same direction and as the driver was unable to control the vehicle speed, dashed

against the petitioner vehicle, resulting in grievous injuries to the petitioner which required treatment as inpatient from 23.02.2012 to 28.03.2012 and subsequently as outpatient till date. The petitioner suffered Fracture at Right Distal Radius, Fracture of Left Spine of Scapula and Fracture of Left Fibula (Undisplaced). The petitioner was aged 64 years and he was doing Real Estate business earning Rs.9,000/- per month. Due to the injury suffered by him, he is not able to carry on his avocation and suffered loss of income. Hence, the petitioner seeks a sum of Rs.6,00,000/- as compensation from the respondent.

4. On the other hand, opposing the claim of the petitioner, the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the petitioner and as such the compensation claimed by the petitioner is exorbitant. The claim of the petitioner, in other aspects is disputed. Further, as there is violation of policy condition the 2nd respondent/Insurance Company is not liable to pay compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined P.Ws.1 and 2 produced document Exs.P1 to P11 to prove his claim. On the respondent side neither oral evidence nor documentary evidence was let in. The Tribunal, after considering the available material on record found the 1st respondent vehicle driver alone responsible for the accident and awarded a sum of Rs.3,79,500/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner/claimant has come forward with the appeal.

6. The learned counsel for the petitioner contends that the Tribunal failed to consider the evidence on record properly and awarded less amount under different heads. The petitioner, further states that he is in need of future treatment and in spite of submitting Estimate letter to that effect, the Tribunal failed to award any amount to meet out future medical expenses. Hence, the petitioner seeks enhancement of the award amount, by allowing the appeal.

7. Per contra, the learned counsel for the respondent contends that the Tribunal after considering the available materials on record has awarded exorbitant amount as compensation and as such plea of the petitioner for enhancement is unwarranted and same has to be negatived. Thus, the respondent/Insurance Company seeks dismissal of the appeal.

8. The Tribunal has fixed negligence on the part of the 1st respondent car driver as the cause of the accident. The finding of the Tribunal about the negligence aspect is not objected before this Court. Hence, the conclusion arrived at by the Tribunal that the negligence on the part of the 1st respondent car driver bearing temporary Registration No.TN-02-/TC-0002/2012 is responsible for the accident is held as just and proper.

9. The petitioner claims that in the accident he suffered the following injuries; Fracture at Right Distal Radius, Fracture Left Spine of Scapula and Fracture Left Fibula (Undisplaced). The petitioner also produced the AR Copy as Ex.P2, Discharge summary as Ex.P4 and X-Ray as Ex.P5. It is evident from the said documents that the petitioner has suffered fracture and also grievous injuries for which he has taken treatment as inpatient from 23.03.2012 to 28.03.2012. The petitioner to prove the disability suffered by him examined the Doctor as P.W.2. The Doctor deposed that he found the petitioner suffering from stiffness in the right wrist, left shoulder and left leg. Further wrist movement was restricted and the petitioner found difficulty in walking and climbing. According to P.W.2, it is difficult for the petitioner to lift any object of more than 5 kilos. P.W.2 on personal examination and on the basis of records and X-rays taken in respect of the petitioner assessed the permanent disability at 60% and issued Ex.P.11-Disability Certificate to that effect. However, P.W.2 has not filed any working sheet or calculation memo as to how he arrived at the disability percentage. He also admitted that he has not produced any X-Rays to show that the petitioner is suffering from malunion of bones. P.W.2, further stated that he did not assess the functional disability of the petitioner. Considering the above said evidence of P.W.2 and the fact that the petitioner was aged 64 years at the time of the accident, the Tribunal has awarded a sum of Rs.1,20,000/- for the 60% disability suffered by the petitioner at the rate of Rs.2,000/- per percentage. However, considering the nature of injury suffered by the petitioner, it would be appropriate to assess the loss due to disability at Rs.3,000/- per percentage. Thus, the disability compensation is calculated as Rs.3000 x 60 =Rs.1,80,000/-

10. Further, as the petitioner states that he is in need of future medical treatment and also produced Ex.P8-Estimate letter, from Sri Ramachandra Hospital, for future medical expenses the petitioner is awarded a sum of Rs.9,000/-. Similarly, considering the nature of injury suffered by the

petitioner the following amounts awarded towards "Pain and Suffering" Rs.40,000/-, "Medical Expenses" Rs.1,45,500/-, "Attender charges" Rs.10,000/-, "Transport Expenses" Rs.25,000/-, and " For Loss of amenities" Rs.25,000/-.

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Transportation, Nourishing food and Miscellaneous expenditure	25,000.00	25,000.00
2	Attender Charges	4,000.00	10,000.00
3	Medical Expenses	1,45,500.00	1,45,500.00
4	Disability	1,20,000.00	1,80,000.00
5	Loss of earning during the period of treatment	45,000.00	45,000.00
6	Pain and Suffering	25,000.00	40,000.00
7	Loss of amenities	15,000.00	25,000.00
8	Future Medical Expenses	-	9,000.00
10	Total	3,79,500.00	4,79,500.00

12. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is modified and enhanced from Rs. 3,79,500/- to Rs.4,79,500/-.
- (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 enhanced award amount, the 2nd 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 six 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.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bri

To

- 1.The VIth Judge,
The Motor Accident Claims Tribunal,
VI Small Causes, Chennai.
- 2.The Section Officer,
V.R.Section, High Court, Madras.[2 Copies]

+1cc to M/S.C.Richard Suresh Kumar, Advocate Sr.10425
[13/06/25018]

सत्यमेव जयते C.M.A.No.2298 of 2015

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srg 05/06/2018

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