

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2316 of 2015

United India Insurance Company Limited,
44-A, Kamaraj Salai,
Manali,
Chennai-600 068

Appellant/Respondent-II

Versus

1.S.Subramanian ... Respondent 1/Petitioner
2.V.Ganesh ... Respondent 2/Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.02.2015 in M.C.O.P.No.4321 of 2012 on the file of Motor Accident Claims Tribunal (Small Causes Court-VI Judge) at Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.V.Balamurugan for R1

J U D G M E N T

The appellant/Insurance Company has come forward with this appeal against the judgment and decree passed in M.C.O.P.No.4321 of 2012 on 02.02.2015, on the file of the learned Motor Accident Claims Tribunal (Small Causes Court-VI Judge), 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 13.06.2011 at about 9.00 hours, when the petitioner was riding his motor cycle bearing Registration No.TN-04-7620 from South to North in Ponneri High Road near Andarkuppam, a motor Cycle bearing Registration No.TN-20-AV-7093 owned by the 1st respondent and insured with the 2nd respondent/Insurance Company, came at high speed from the opposite direction and without following any

traffic rules dashed against the petitioner's vehicle, resulting in grievous injuries to the petitioner. At the time of the accident, the petitioner was self employed doing Gunny Bag Businesses and he was aged 64 years. Due to the injury suffered by him, he is not able to carry on his avocation and suffered loss of income and also incurred medical expenses. Hence, the petitioner seeks compensation of Rs.6,00,000/- from the 2nd respondent/Insurance Company.

4. On the other hand, opposing the petition by filing counter, the 2nd respondent/Insurance Company contended that the accident occurred only due to the negligence of the petitioner and the driver of the 1st respondent was not responsible for the occurrence. It is further contended that the driver of the vehicle involved in the accident has no valid effective driving license and no insurance policy was in force on the date of the accident. The claim of the petitioner is exaggerated and the same is unsustainable and the accident occurred only due to the fault of the Petitioner. The claim of the petitioner is not acceptable and thus the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, to substantiate his claim, the petitioner examined himself as P.W.1 and the medical expert as P.W.2 and produced Exs.P1 to P15. On the side of the 2nd respondent, neither oral nor documentary was produced.

6. The trial Court, on the basis of available oral and documentary evidence, found the 1st respondent vehicle driver is responsible for the accident and therefore, as the owner and insurer of the vehicle, the respondents 1 and 2 were held jointly and severally liable to pay a sum of Rs.4,56,000/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has preferred this Appeal.

7. The learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal ought to have held that the negligence of the petitioner alone caused the accident and not the negligence of the 1st respondent/vehicle driver. It is further contended that the evidence of P.W.2, Doctor and the permanent disability certificate, Ex.P15, exhibited by him is not appropriate and the Tribunal ought to have disbelieved the same. In the absence of continuous medical record, the finding of the Tribunal regarding loss of income, earning capacity, and the disability suffered by the petitioner aged 64 years at the time of accident is not proper and the same deserves to be interfered with. Hence, the learned counsel for the 2nd

respondent/Insurance Company contends that the Appeal may be entertained and the award passed by the Tribunal be set aside.

8. Per contra, the learned counsel for the petitioner/claimant contends that the oral and documentary evidence produced before the Tribunal is clear and cogent and the same clearly established the fact of negligence of the 1st respondent driver alone is responsible for the accident. Similarly, the evidence produced on the side of the Petitioner, clearly established the fact of the petitioner getting monthly income from the Gunny bag business. Hence the learned counsel for the petitioner contends that the award passed by the Tribunal is based on clear cut oral and documentary evidence and the same needs no interference. Thus the petitioner sought for dismissal of the appeal.

9. The petitioner who deposed as P.W.1, stated that the 1st respondent vehicle rider dashed against him, resulting in the injury suffered by him. P.W.1 has categorically deposed that the offending vehicle alone came at high speed driven in a rash and negligent manner, without following the rules. The documents filed on the side of the Petitioner viz., Ex.P.2-F.I.R as well as Ex.P.3-Charge Sheet also shows that case is registered against the 1st respondent vehicle driver alone. In such, circumstances, Ex.P.1-A.R. Copy, as well as Ex.P.4-discharge summary clearly proved that the petitioner has suffered injuries. The petitioner also produced Ex.P.13-Driving license, to prove that he had valid license to drive the two wheeler. In such circumstances, as the oral evidence of P.W.1 has not been contradicted by any oral or documentary evidence on the side of the respondents and as Ex.P2-F.I.R is laid against the 1st respondent vehicle driver and after investigation, Ex.P.3-Charge sheet was also laid against the 1st respondent vehicle driver, it is clear that the negligence on the part of the 1st respondent vehicle driver only caused the accident. Thus, the contention of the petitioner and the finding of the trial Court that the negligence of the 1st respondent vehicle driver alone is responsible for the accident is just and proper and the same is confirmed.

10. The finding of the Tribunal in awarding compensation and the amount arrived at under various heads is challenged by the 2nd respondent/Insurance Company, in the present appeal.

11. The petitioner claims himself to be of 64 years. In Ex.P.13-Driving license, his date of birth is mentioned as

30.02.1954. On that basis, the Tribunal has fixed the age as 61 and the same is not disputed by the 1st respondent. Hence, the age of the petitioner is fixed at 61. The petitioner states that he was carrying on Gunny bag merchant business and earned Rs.10,000/- per month. However, there was no material placed before the Court to substantiate his earnings. Therefore, the Tribunal fixed the petitioner's monthly income at Rs.6,500/-. However, this court while taking into consideration the avocation of the petitioner, is inclined to fix Rs.7,500/- as monthly income. The petitioner states that he suffered grievous injury in the accident and he is unable to carry on his business and examined P.W.2-Doctor who issued Ex.P.15 - disability Certificate to prove the same. In such circumstances, taking into account Ex.P.4-discharge summary, Exs.P.12 and P.14-X-Rays, Ex.P.11-X-ray report and Ex.P.15-Disability certificate, the disability suffered by the Petitioner is fixed at 45%. Since the disability suffered by the Petitioner is 45%, he is not in a position to carry on his avocation and consequently, there is loss of income. In such circumstances, the compensation under the head "Permanent Disability" is calculated as under:-

$$45\% \times \text{Rs.}3000 = 1,35,000/-.$$

Thus, a sum of Rs.1,35,000/- is awarded under the head "Permanent Disability".

12. The petitioner was admitted in hospital on 13.06.2011 and discharged on 17.06.2011 from Sugam Hospital, Thiruvottiyur, Chennai, and the same is established by Ex.P4-Discharge summary. Ex.P.11-X-Ray report shows that the petitioner suffered fracture. Considering the nature of injury and the period of treatment as inpatient, it would be appropriate to award Rs.50,000/- towards Pain and Suffering. Considering the period of treatment undergone by the Petitioner as inpatient and other circumstances, towards attender charges, Rs.5,000/- is to be allotted. The petitioner states there is a need of further medical treatment to remove the plate and in that regard a sum of Rs.30,000/- is sought for. Considering the fact that the petitioner suffered fracture in the leg and interlocking nailing has been done, this Court is inclined to award Rs.30,000/- towards future medical expenses. Likewise, towards loss of amenities, Rs.25,000/- is awarded.

13. The petitioner has produced Exs.P.7 and P.8 under which, he has incurred medical expenses to the tune of Rs.29,382/-. Hence, the petitioner is entitled for a sum of Rs.40,000/- under the head "medical expenses". The petitioner states that in respect of medical treatment, he was going to hospital regularly. Hence, under the head "transport charges", Rs.10,000/- is allotted. Likewise, for Extra Nourishment, Rs.20,000/- is awarded, for damage of clothes Rs.5,000/- is awarded.

14. The petitioner further contends that he was carrying on business of Gunny bag and due to the injuries suffered by him, he was not able to carry on work for several months and suffered mandatory loss. As stated in the preceding paragraph, the income of the petitioner is fixed at Rs.7,500/- per month. In such circumstances, considering the fact that the petitioner was not able to carry on his business for several months, it will be appropriate to calculate the loss of income for 8 months and accordingly, grant Rs.60,000/- (Rs.7,500/- x 8 = Rs.60,000/-) towards "loss of income".

15. In view of the above said discussion, this Court is inclined to modify the amount awarded by the tribunal under different heads as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Disability	3,90,000.00	1,35,000.00
2	Loss of earnings during treatment period	6,500.00	60,000.00
3	Extra nourishments	5,000.00	20,000.00
4	Damage of clothes	5,000.00	5,000.00
5	Transport	5,000.00	10,000.00
6	Pain and Sufferings	-	50,000.00
7	Attender Charges	5,000.00	5,000.00
8	Loss of Amenities	-	25,000.00
9	Medical Expenses	39,400.00	40,000.00
			Future medical expenses 30,000
	Total	4,55,900/- rounded off to 4,56,000/-	3,80,000.00

16. In the result, the Civil Miscellaneous Appeal filed by the appellant/Insurance Company is Partly Allowed without costs as shown below:-

- (1) The award granted by the Tribunal is reduced from Rs.4,56,000/- to Rs.3,80,000/-
- (2) 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;
- (3) In view of the above modified award amount, the

appellant/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with proportionate accrued interest and costs within a period of six weeks from the date of receipt of a copy of this order;

(4) On such deposit, the injured claimant/1st respondent is permitted to withdraw the modified amount awarded along with accrued interest, less the amount already withdrawn, 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(CCC)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Small Causes Court-VI,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.V.Balamurugan, Advocate, S.R.No.6546

C.M.A.No.2316 of 2015

PVS (CO)
CS/19/04/18

सत्यमेव जयते

WEB COPY