

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1719 of 2017

Karthikeyan @ Karthik

..Appellant/Petitioner

Versus

1.Sekar

2.United India Insurance Company Ltd.,
No.48, Arcot Road,
Saligramam, Chennai

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 20.04.2015 made in M.C.O.P.No.792 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.S.Udayakumar

For Respondents : Mr.D.Baskaran [for R2]
R-1 Ex-parte.

J U D G M E N T

The petitioner/claimant has filed this appeal against the judgment and decree dated 20.04.2015 made in M.C.O.P.No.792 of 2009 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

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

3. The case of the petitioner is that on 18.01.2007, at about 4.30 p.m, while the petitioner was riding his two wheeler bearing Registration No.TN-09-M-0329 near EB Office, Porur, the 1st respondent's van bearing Registration No.TN-01-V-3850 came at high speed in the opposite direction dashed against the two wheeler, in which, the petitioner was proceeding, causing him grievous injuries all over his body. The accident occurred only due to rash and negligent driving of the 1st respondent van. At the time of the accident, the petitioner was aged 23 years and

by working as a conveyor belt operator in a private concern, Porur, he was earning Rs.12,000/- per month. Due to the injury suffered by him, he is not able to attend to his work regularly and suffered loss of income. Hence, the petitioner seeks a sum of Rs.3,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company contends that the accident did not occur as alleged by the petitioner. There was a delay of 7 days in lodging the complaint and if really accident took place as alleged by the petitioner, he would have lodged the complaint on the date of accident itself. The claim of the petitioner about his age, avocation and income is denied. The accident occurred due to contributory negligence of the petitioner. Further as the vehicle was not owned by the 1st respondent at the time of the accident and the driver of the vehicle was not having valid driving license, the 2nd respondent/Insurance Company is not liable to pay any amount as compensation. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Exs.P.1 to P.26 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal, on the basis of available materials, found that the 1st respondent vehicle driver alone caused the accident due to his negligence and awarded a sum of Rs.1,94,855/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the petitioner contends that the Tribunal failed to consider the available evidence on record properly and fixed the disability at 40% instead of 45% as opined by the Doctor. The Tribunal ought to have applied multiplier method instead of adopting percentage method for the disability suffered by the petitioner. The award passed by the Tribunal is on the lower side and the same needs to be enhanced by allowing the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the negligence of the petitioner alone caused the accident and as such he is not entitled to seek compensation on the available evidence. The Tribunal has passed the award which itself is on higher side and no ground is made out by the petitioner to enhance the award amount. Hence, the 2nd respondent/Insurance Company sought for dismissal of the appeal.

8. The petitioner who suffered injury in the accident clearly deposed that on 18.01.2007 at about 4.30 p.m., while he was proceeding in the two wheeler near E.B Office Porur, the 1st respondent van bearing Registration No.TN-01-V-3850 came at high speed and dashed against the two wheeler, which the petitioner was riding, resulting in grievous injuries to him. The police also registered a case against the respondent driver only in Ex.P.1 - F.I.R.

9. On the other hand, no contra evidence was let in by the respondent to disprove the version stated by P.W.1 and the contents of Ex.P.1 - F.I.R. As such, it is apparent that the negligence on the part of the 1st respondent's driver alone caused the accident.

10. The offending vehicle was owned by the 1st respondent and the same was insured with the 2nd respondent as per Ex.P.23 - Copy of the Insurance Policy. Therefore, the respondents who are the owner and insurer of the vehicle are liable to pay compensation to the petitioner.

11. The petitioner states that for the injury suffered by him he took treatment as in patient as well as out-patient in a Private hospital at Porur. The petitioner also produced Ex.P.2 - A.R.Copy and Ex.P.3 - Discharge Summary. It is clear from the same that he took treatment in the private hospital from 18.01.2007 to 29.01.2007. The Doctor, who assessed the disability suffered by the petitioner deposed as P.W.2 and stated that the petitioner is having 40% disability and he also produced the disability certificate issued by him as Ex.P.26. According to P.W.2, due to fracture and loss of teeth, the petitioner is finding it difficult to open and close his mouth. He is having restricted jaw movement as well as disfigurement. He assessed the disability suffered by him and stated the same in Ex.P.26 - Disability Certificate. The Doctor has given different percentages of disability for separate organs and on that basis, the total disability suffered by the petitioner is fixed as 40%. It is clear from the evidence on record that the petitioner suffered fracture in his nasal bone, lost his tooth and also suffered disfigurement. Considering the nature of injury suffered by the petitioner and the evidence of P.W.2 - Doctor, it will be appropriate to fix the disability at 40%. However, there is no evidence to show that the petitioner suffered any functional difficulty and therefore, it will be appropriate to adopt percentage system to compensate the disability suffered by him. Accordingly, the physical disability suffered by the petitioner is fixed as 40% and Rs.2,000/- is awarded for each percentage of disability. Thus the disability compensation is calculated as $40\% \times 2000 = \text{Rs.}80,000/-$.

12. The petitioner stated that by working as a conveyor belt operator he was earning Rs.12,000/- per month. He produced Ex.P.24 - Salary certificate. However, the Tribunal did not accept Ex.P.24 - Salary certificate and fixed the notional income at Rs.6,000/- per month, pointing out that neither the employer nor any official in the establishment was examined. Taking into account the fact that the employer of the petitioner has not been examined and only Ex.P.24 - Salary Certificate is marked, the Tribunal, refused to accept the same and fixed the notional income at Rs.6,000/-. However, considering the fact that Ex.P.24 - Salary certificate shows the monthly income as Rs.12,000/- it will be appropriate to fix the notional income at Rs.10,000/- per month. Further, keeping in mind the treatment underwent by the petitioner as inpatient for a considerable period of time and the nature of injury suffered by him and that he was unable to attend to his work atleast for two months, the loss of income during the treatment period is calculated as follows:-

$$\text{Rs.10,000} \times 2 \text{ months} = \text{Rs.20,000/-}$$

As far as other amounts awarded by the Tribunal as compensation under different heads are concerned, this court is of the view that the same are just and proper and therefore, the same is confirmed.

13. However, it is contended by learned counsel for the appellant/petitioner that since the appellant is required to undergo future medical expenses, prayed that some amount has to be provided for. Taking into consideration the nature of injury suffered by the petitioner, it will be appropriate to award Rs.10,000/- towards "Future medical expenses". The petitioner being an unmarried and suffered grievous injuries as well as fracture which may ultimately affect his personal life and is unable to do his regular work, this court is inclined to grant Rs.25,000/- towards "loss of amenities". The amount provided under other heads appears to be nominal. Hence, the same needs no interference.

14. 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	Loss of Income	Rs.15,000.00	Rs.20,000.00
2	Transport	Rs.5,000.00	Rs.5,000.00
3	Extra nourishment	Rs.15,000.00	Rs.15,000.00
4	Damages of Clothes	Rs.500.00	Rs.500.00
5	Medical Expenses	Rs.54,355.00	Rs.54,355.00

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
6	Pain and Suffering	Rs.25,000.00	Rs.25,000.00
7	Disability 40%	Rs.80,000.00	Rs.80,000.00
8	Future Medical Expenses	-	Rs.10,000.00
9	Loss of Amenities	-	Rs.25,000.00
10	Total	Rs.1,94,855.00	Rs.2,34,855.00

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

- (i) The award of the Tribunal is enhanced to Rs.2,34,855/- from Rs.1,94,855/-.
- (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 judgment.
- (iv) On such deposit, the petitioner/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.
- (vi) Petitioner/claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount. No costs.

Sd/-
सत्यमेव जयते
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

bri

To

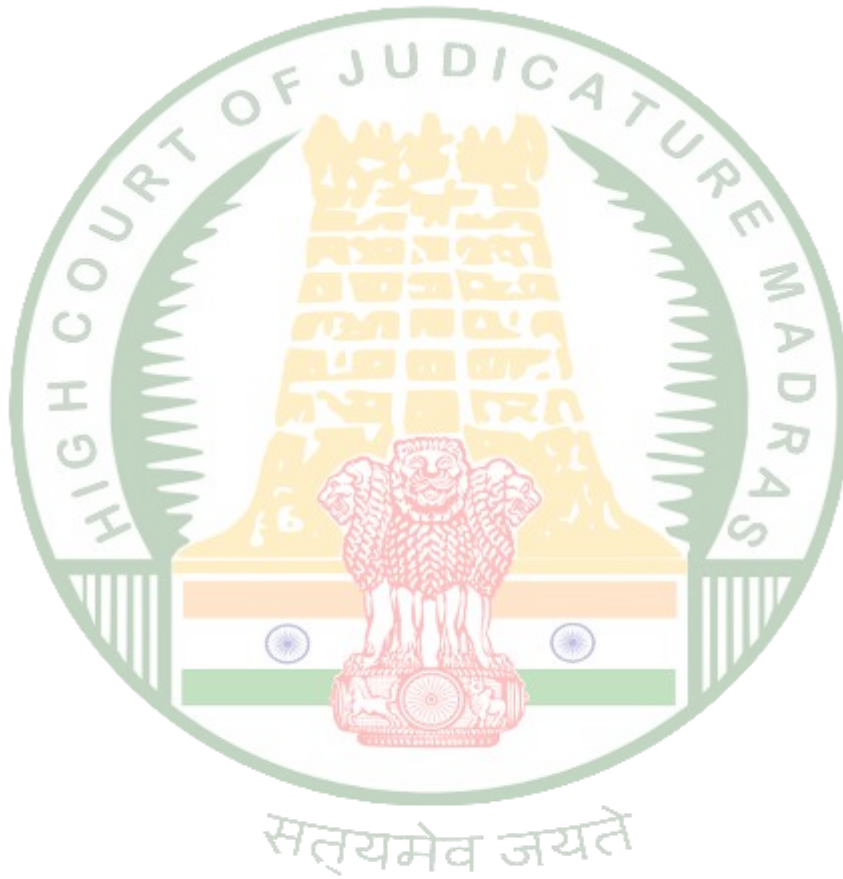
1.The III Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Udaya Kumar, Advocate SR.No.19848
+1cc to Mr.D.Bhaskaran, Advocate SR.No.19961

C.M.A.No.1719 of 2017

CA(CO)
GN(11/05/2018)



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