

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.614 of 2015
and M.P.No.1 of 2015

United India Insurance Co.Ltd.,
146N, Kumar Complex
Tiruchengode, Namakkal District ...Appellant/2nd
respondent

vs

1.Annadurai ...1st respondent/Petitioner
2.Sengathir Selvan ...2nd respondent/1st
respondent.

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.11.2013 made in M.C.O.P.No.520 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Judge No.1, Salem.

For appellant : : Mr.S.Arunkumar
For Respondents : :
for R1 : : Mr.S.P.Yuaraj and
Mr.P.K.Shivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the 2nd respondent before the Tribunal/Insurance Company, challenging the judgment and decree dated 12.11.2013 made in M.C.O.P.No.520 of 2011 on the file of Motor Accident Claims Tribunal, Special Sub Judge No.1, Salem.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 25.05.2010, at 15.10 hours, when the Petitioner was travelling as a Passenger in the 1st respondent owned bus bearing Reg.No.TN-30-AB-2526 from Salem to Mettur and when the bus arrived at Mettur Bus stand, the petitioner got down from the bus and while he was standing there, the driver of the bus, without any warning moved the bus in the reverse direction in a negligent manner and thereby, the bus dashed against the petitioner, causing him multiple fracture and grievous injuries all over the body. The Petitioner averred

in his petition that he is aged 43 years, working as LIC Agent and earning Rs.3,00,000/- per annum and due to grievous injuries suffered by him, he is not able to attend his LIC Agent work and suffered loss of income. Thus, the petitioner contending that the accident took place only due to the negligence of the 1st respondent bus driver, sought compensation of Rs.50,00,000/- from the respondents, who are the owner and insurer of the offending vehicle.

3. On the other hand, opposing the claim of the petitioner by filing counter, the 2nd respondent/Insurance Company disputed the nature and the manner of the accident averred by the Petitioner. It is submitted that even before the bus came to a halt, the petitioner all of a sudden, tried to get down from the bus and in the process, fell down and suffered injuries and as such, the Petitioner also contributed to the accident by his negligent act. The claim of the Petitioner about his avocation, income, loss of earning capacity were all denied. The Plea of the Petitioner for compensation of Rs.50,00,000/- is exorbitant. Hence, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and two other witnesses as P.Ws.2 and 3 and produced documents Ex.P.1 to Ex.P.11 and also Ex.X.1 to Ex.X.5 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in. The Tribunal on overall analysis of materials available on record, found that the 1st respondent bus driver's negligence alone caused the accident and awarded a sum of Rs.5,74,000/- as compensation to the Petitioner. Aggrieved over the said finding of the Tribunal, the 2nd respondent/Insurance Company has come forward with this appeal.

5. The learned counsel appearing for the appellant/Insurance Company contended that the finding of the Tribunal is based on wrong appreciation of evidence. The award of Rs.5,74,000/- as compensation is very high. The amount awarded under different heads is also unsustainable. Hence, the 2nd respondent/appellant-Insurance Company seeks to set aside the order of the Tribunal.

6. Per contra, the learned counsel for the injured Petitioner/1st respondent herein, contends that the Tribunal, on proper appreciation of materials placed before it, has awarded just and proper compensation and the same needs no interference. The learned counsel prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for both sides and perused the documents.

8. The fact that the accident occurred on 25.05.2010 is not disputed. The 2nd respondent/Insurance Company contends that the Petitioner also contributed to the accident by his negligence. P.W.1/injured Petitioner, in his evidence, has stated that after alighting from the bus at Mettur Bus stand, while he was standing there, the driver of the bus, reversed the bus without noticing his presence, resulting in the accident. The 2nd respondent has not examined either the driver or the conductor of the bus to disprove the claim of the Petitioner. Further, the Police registered Ex.P.1-FIR against the driver of the bus only. Further after completing the investigation, the Police also filed Ex.P.4-Charge Sheet against the driver of the bus only. Ex.P.3-Rough Sketch of the accident spot also clearly proves the fact that the accident occurred within the bus bay. In such circumstances, it is clear that the accident occurred only due to the negligence of the driver of the bus. As stated earlier, there is no contra evidence let in by the respondents to prove any negligence on the part of the Petitioner to seek contributory negligence. Hence, the finding of the Tribunal that the accident occurred only due to the first respondent bus driver's negligence is correct.

9. The Petitioner stated that he is working as Insurance Agent and he has suffered crush injury on the left foot and fracture on the 3rd and 4th metatarsal bones. It is evident from Ex.P.6 Discharge Summary that the Petitioner took treatment as inpatient at Manipal Hospital, Salem from 25.05.2010 to 05.06.2010. The impairment caused to the left foot of the Petitioner is clearly evident from Ex.P.7 -Photographs. As per Ex.P.5-Wound Certificate, the injury suffered by the Petitioner is mentioned as Grievous Injury. The doctor who assessed the disability suffered by the Petitioner while deposing as P.W.2 has stated that there is deformity in the left foot of the Petitioner and he is having pain over the left foot and lost sensation in the 5th Metatarsal bone. The doctor had filed Ex.X.1-disability certificate and Ex.X.2-X-ray and also assessed the disability suffered by the Petitioner at 32%. According to P.W.2 due to the above injuries, the Petitioner finds it difficult to climb staircase and standing for long time.

10. On the other hand, the learned counsel for the 2nd respondent/Insurance Company contended that P.W.2 doctor has not given treatment to the Petitioner and his assessment is not supported by any working sheet. It is further pointed out that the assessment should be for the whole body and not organ oriented.

11. However considering the nature of injuries suffered by the Petitioner and on a perusal of the documents filed in support of the same, the Tribunal fixed the disability suffered by the petitioner at 25%. This court is also of the view the

petitioner would have experienced severe pain and suffering both at the time of the accident and also during treatment period. Further the petitioner has also undergone surgery. In such circumstances the Tribunal fixing the disability at 25% is just and proper. Further the Tribunal, taking into consideration the medical bills filed in Ex.P.11, X-ray bill in Ex.X.3, granted Rs.83,000/- towards medical bills. That apart, the Tribunal in all, granted the following amounts as compensation:-

Sl.No.	Head	Amount awarded by the Tribunal
1.	Pain and suffering	Rs. 30,000
2.	Mental agony	Rs. 10,000
3.	Loss of income during treatment	Rs. 80,000
4.	Food and extra nourishment	Rs. 5,000
5.	Medical expenses	Rs. 83,000
6.	Transport expenses	Rs. 16,000
7.	For disability	Rs. 50,000
8.	Loss of earning capacity	Rs. 2,00,000
9.	Loss of future income	Rs. 1,00,000
	Total	Rs. 5,74,000/-

12. The learned counsel for the Petitioner contended that due to the injury suffered by the Petitioner and the consequent permanent disability, the petitioner is unable to carry on his avocation as Insurance Agent. The Petitioner filed Ex.P.8-Details of Commission earned from LIC, pertaining to the period 2010 to 2013 and the learned counsel for the petitioner, relying on the said document, submitted that the income of the petitioner deteriorated due to his inability to travel and meet new clients. As per the petition averments, the petitioner is stated to be earning Rs.3 lakhs per annum as LIC Agent, but after the accident, the Petitioner is unable to travel and meet new clients due to which his professional income has come down. The Petitioner also produced LIC Agent's ranking list as Ex.P.9-Agents NB Ranking List 2009-2010 and contended that the Petitioner's ranking dwindled from 4th rank in the year 2009-2010 to 50th rank in the year 2012-2013. The LIC Official who deposed as P.W.3 admitted the contents of Ex.P.8 and Ex.P.9 as true one. According to him, the agent commission of the Petitioner came down from Rs.2,55,820 in 2009-10 to Rs.1,65,172/- in the year 2011-12. Thus, the Petitioner contends that the disability suffered by him caused functional disability and as such, the multiplier system is to be adopted to calculate the loss of earning capacity. However, the Petitioner has not preferred any Cross Appeal or Cross Objection. Further it is clear from the evidence of P.W.3, the official of the LIC Officer, Bhavani,

that the Petitioner is continuing to work as LIC Agent and carrying on business. The learned counsel for the 2nd respondent also pointed out that the Policy commission payable to the LIC agent would continue and as such, the Petitioner will not suffer any loss of income. The Tribunal on the basis of available materials placed before it, found that there is nothing on record to establish that the petitioner suffered functional disability. Taking note of all the above said facts and the claim of P.W.3 that the Petitioner is continuing to perform his LIC Agent work, this court finds no fault in the conclusion arrived at by the Tribunal that the functional disability of the petitioner is not established. In such circumstances, only percentage method has to be adopted and there is no need to apply multiplier method. Further, it will be appropriate to assess the loss of earning due to disability at the rate of Rs.3000/- per percentage of disability. Hence, for permanent disability and the consequent loss of earning, this court is inclined to grant the following sum as compensation:-
Rs.3000 x 25% disability = Rs.75,000/-.

13. Considering the nature of injuries and the resultant pain and suffering undergone by him both at the time of accident and during the period of treatment, this court is inclined to grant Rs.50,000/- under the head "Pain and suffering" instead of Rs.30,000/- granted by the tribunal.

14. It is apparent that the petitioner having suffered multiple injuries would not have been able to carry on his profession for atleast 5 months. It is stated by the Petitioner that he was earning Rs.3,00,000/- per annum. However, there is no return of income filed by him. Of course, the Petitioner produced Ex.P.8 details of commission earned by him in LIC. In such circumstances, the monthly income fixed by the Tribunal at Rs.20,000/- is modified, and this court is inclined to fix the same at Rs.25,000/-. Thus the loss of income during the period of treatment is calculated as under:-
Rs.25,000/- x 5 months = Rs.1,25,000/-.
In view of the above discussion, the modified award passed by this court is as shown below:-

Sl.No.	Head	Amount awarded by the Tribunal	Amount awarded by this court
1.	Pain and suffering	Rs. 30,000	Rs. 50,000/-
2.	Mental agony	Rs. 10,000	---
3.	Loss of income during treatment	Rs. 80,000	Rs.1,25,000/-
4.	Food and extra nourishment	Rs. 5,000	Rs. 25,000/-
5.	Medical expenses	Rs. 83,000	Rs. 83,000/-

Sl.No.	Head	Amount awarded by the Tribunal	Amount awarded by this court
6.	Transport expenses	Rs. 16,000	Rs. 20,000/-
7.	For disability	Rs. 50,000	Rs. 75,000/-
8.	Loss of earning capacity	Rs. 2,00,000	---
9.	Loss of future income	Rs. 1,00,000	---
10.	Attender charges	---	Rs. 20,000/-
	Total	Rs. 5,74,000/-	Rs.3,98,000/-

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed with the following directions:-

- (i) The award of the Tribunal is modified and reduced to Rs.3,98,000/- from Rs.5,74,000/-.
- (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) It is seen from the order passed by this court dated 26.03.2015 in M.P.No.1 of 2015 in CMA.No.614 of 2015 that the Appellant/Insurance Company was directed to deposit the entire award amount together with accrued interest and costs. Hence, in view of the above modified reduced award amount, the appellant/Insurance Company is entitled to withdraw the excess amount, lying in deposit before the Tribunal, after satisfying the order of this court.
- (iv) The 1st respondent/claimant is permitted to withdraw the award amount with accrued interest, less the amount if any 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.

Consequently, connected MP is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Special Sub Judge No.1, Salem.

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

+1 cc to Mr.S.Arunkumar Advocate sr 14978

+1 cc to Mr.S.P.Yuaraj Advocate sr 15220

C.M.A.No.614 of 2015

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