IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.643 of 2015

A.Karthikeyan ..Appellant/Claimant

vs.

1. V.Manivannan
2. P.S.Selvaraj
3. The National Insurance Co. Ltd.,
   Branch Office at No.2, Erode. ..Respondents/Respondents

Civil Miscellaneous Appeal has been filed against the judgment and award dated 17.07.2012 passed in M.C.O.P.No.68 of 2011, by the Motor Accident Claims Tribunal (Sub Court), Perundurai, Erode District.

For appellant : Mr.A.K.Kumarasamy Senior councel for Mr.Kaithamalai Kumaran

For Respondents : M/s.N.B.Surekha

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the petitioner/claimant, against the judgment and decree dated 17.07.2012 passed in M.C.O.P.No.68 of 2011, by the Motor Accident Claims Tribunal (Sub Court), Perundurai, Erode District.

2 For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the claimant before the Tribunal as per his claim petition is that on 19.01.2011, when the petitioner was going towards west by riding his TVS XL Motor Cycle bearing Reg.No.TN 56 A 8805 in Perundurai - Erode east west road, at about 3.30 p.m, the lorry bearing Reg.No.TN 34 C 7282 came in the opposite direction at high speed and without observing traffic rules, dashed against the two wheeler of the petitioner, causing grievous injuries in head and left leg of the petitioner. The accident occurred only due to rash and negligent driving of the lorry by its driver. The petitioner was aged about 27 years and was employed as Assistant Technician in a private industry and earning monthly salary of Rs.9,000/-. The

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petitioner due to the injuries suffered by him, is unable to move freely and that his earning capacity was affected. He was without any income for more than one year due to his inability to attend any work. Hence the petitioner seeks a sum of 3.00 lakhs as compensation from the respondents, who are the driver/owner and insurer of the offending vehicle.

3 On the other hand, opposing the claim of the petitioner, by filing counter, the third respondent/Insurance Company, contended that the negligence of the petitioner alone caused accident and it is incorrect to allege that the first respondent/lorry driver came at high speed in a rash and negligent manner and caused accident. The lorry driver was coming at normal speed in the East West main road and at that time, the petitioner crossed the road suddenly from south to north without noticing the lorry, resulting in the accident. The petitioner contributed to the occurrence and as such he is not eligible for any compensation. The tribunal has to assess the petitioner's disability, income and other factors properly. Thus, the third respondent contended that the claim of the petitioner was legally unsustainable and the same is liable to be rejected.

4 Before the tribunal, the petitioner examined P.W.1 to P.W.3 and produced documents Ex.P1 to Ex.P14, to prove his claim. On the side of the respondents, no oral or documentary evidence was let in. The tribunal on the basis of available material placed before it, found that the first respondent/lorry driver is responsible for the accident and arrived at Rs.4,73,558/- as compensation, but, awarded a sum of Rs.3.00 lakhs as compensation to the petitioner, since the petitioner's claim was only to that extent. Being not satisfied with the conclusion of the Tribunal and quantum awarded, the petitioner has come forward with the present appeal.

5 The learned counsel for the petitioner contended that the Tribunal on the basis of available material, arrived at Rs.4,73,558/- as compensation, but, restricted the said amount and awarded only a sum of Rs.3.00 lakhs as compensation, since the petitioner's claim was only Rs.3.00 lakhs, which is not proper. The Tribunal ought to have awarded just compensation as arrived by it. The conclusion of the Tribunal is against the principles of natural justice and thus the petitioner seeks to enhance the award to Rs.4,73,558/- as arrived by the Tribunal and to allow the appeal. The petitioner also filed M.P.No.1 of 2015 in CMANo.SR533 of 2014 seeking enhanced compensation.

6 On the other hand the learned counsel for the third respondent/Insurance Company, even though opposed the claim of the petitioner, admitted that the tribunal arrived at

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Rs.4,73,557/- as compensation, but, restricted it to a sum of Rs.3.00 lakhs, as the claim of the petitioner is only to that extent.

7 Heard the learned counsel appearing for both sides and also perused the materials available on record.

8 The petitioner claims that while he was going in his two wheeler, the first respondent lorry came at high speed and dashed against him resulting in the accident. The evidence of P.W.1, was not contradicted by any oral or documentary evidence on the side of the respondents. The petitioner also produced Ex.P1 FIR and a copy of the charge sheet filed against the first respondent/lorry driver as Ex.P.6. Further it is stated that the Driver of the offending vehicle admitted his liability and suffered punishment and also paid the penalty. The learned counsel for the petitioner/claimant produced Ex.P7 copy of the judgment of criminal court, Ex.P2 Rough Sketch and Ex.P3 copy of the observation mahazar to prove his contention. It is very clear from the above said documents and the oral evidence of P.W.1, that the accident occurred only due to rash and negligent driving of the first respondent lorry.

9 It is avered in the claim petition that the petitioner was aged about 27 years, when the accident occurred and he suffered fracture in his head and left leg. He produced wound certificate as Ex.P5. According to P.W.1, petitioner/claimant, he took first aid in K.M.C.H Hospital at Perundurai, after that, he took further treatment at Ganga Hospital, Coimbatore. The Doctor in the said Ganga Hospital, Coimbatore was deposed as P.W.2 has stated that the petitioner was treated as in patient from 19.01.2011 to 21.01.2011 under the Government Insurance Scheme. According to him, the petitioner was treated for blood clot in his head and also for fracture in his left thigh. Consequently the petitioner took treatment on his own expenses from 22.01.2011 to 31.01.2011. The discharge summary was produced as Ex.P8 and Ex.P9. Similarly another Doctor who deposed as P.W.3 stated that he is working as Orthopaedic Surgeon in S.K.M. Hospital and he examined the petitioner. As per his assessment the permanent disability suffered by the petitioner was 55%. The X-Ray report was produced as Ex.P13 and the disability certificate issued by him was produced as Ex.P12. Considering the oral evidence of P.W.2 and P.W.3 and documents produced by the petitioner, the Tribunal fixed the permanent disability of the petitioner at 45%.

10 Under the circumstances stated above, this Court is of the view that the disability fixed by the Tribunal appears to be just and correct. Further the petitioner has not challenged the same before this Court. Similarly, the monthly income of the petitioner was fixed as Rs.4000/- by the Tribunal which is also

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not disputed by the petitioner. Further the petitioner/claimant has not disputed the amount awarded by the Tribunal under the other heads. Admittedly, the Tribunal has arrived the compensation eligible to the petitioner/claimant as follows:

Loss of Income	:	Rs.3,88,000/-
Transportation	:	Rs. 5,000/-
Nourishing	:	Rs. 5,000/-
Medical Expenses	:	Rs. 65,558/-
Pain and Suffering	:	Rs. 10,000/-
Total	:	Rs.4,73,558/-

11 However as the claim of the petitioner was only Rs.3.00 lakhs, the Tribunal restricted the award to Rs.3.00 lakhs. The petitioner aggrieved over the same has come forward with the appeal. The only contention of the petitioner before this Court is that the Tribunal ought to have awarded the sum of Rs.4,73,558/- as arrived at and should not have restricted the award to Rs.3.00 lakhs, on the ground that the petitioner's claim is only to that extent.

12 Admittedly, the Tribunal has to award fair and just compensation. As rightly pointed out by the learned counsel for the petitioner, there is no restrictions on the Tribunal to award higher compensation than sought for in the petition. In the absence of any reason for restricting the compensation, this Court is inclined to entertain the appeal. Since the quantum arrived by the Tribunal is not challenged by the respondent by filing any appeal, the claim of the petitioner that he is entitled for the actual compensation arrived by the Tribunal i.e. Rs.4,73,558/- is quite reasonable.

13 Accordingly, the compensation awarded by the Tribunal stands enhanced to Rs.4,73,558/- by this court. In the result, the Civil Miscellaneous Appeal is Allowed with costs as follows:-

(i) The award of the Tribunal is enhanced to Rs.4,73,558/- from Rs.3,00,000/-;

(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) In view of the above modified enhanced award amount, the third respondent is directed to deposit the award amount with proportionate interest and costs, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;

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(iv) On such deposit, the petitioner/claimant is permitted to withdraw the amount awarded, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application;

(v) In view of the enhanced compensation, the appellant/petitioner shall pay the necessary court fee before obtaining the copy of the Judgment, if already not paid.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal (Sub Court),
   Perundurai, Erode District.

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

3. The National Insurance Co. Ltd.,
   Branch Office at No.2, Erode.

+1cc to Mr.S.Kaitha Kumaran, Advocate SR.No.9133
+1cc to Mr.N.B.Surekha, Advocate SR.No.9421

C.M.A.No.643 of 2015

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