

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.3270 of 2011
and

M.P.No.1 of 2011

The Manager

M/s.Royal Sundaram Alliance Ins. Co. Ltd.,

Whites Road, Chennai.

Appellant/2nd respondent

...vs...

1.Vivekanandan(died)

1st respondent/petitioner

2.K.Kuzhanthaivel

2nd respondent/1st respondent

3.Tmt.Tamilarasi

4.Tmt.Mekala

5.Tmt.Rekha

6.Selvi. Kavitha

7.Kaliyamurthy

(Respondents 3 to 7 brought on record as
Lrs of the deceased first respondent vide
this Court by order dated 15.03.2018 made
in CMP.No.12939/2017)

Respondents 3 to 7/Lrs of first respds.

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Order and Decreetal Order dated 16.06.2011 made in MCOP.No.95 of 2010 on the file of the Motor Accident Claims Tribunal/Sub Judge, Perambalur.

For Appellant : Mr.N.Vijayaraghavan

For Respondents : Mr.S.Kamadevan for R1 and R3 to R7

JUDGMENT

Aggrieved over the finding of the Tribunal, dated 16.06.2011 made in MCOP.No.95 of 2010 on the file of the Motor Accident Claims Tribunal/Sub Judge, Perambalur, the second respondent-Insurance Company filed this present appeal for enhancement of award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 02.10.2008 at about 10.30 a.m., while the petitioner along with one Vijayakumar were proceeding in the bicycle from North to South in Thirumanur Main Road, a Heavy vehicle bearing Registration No.TN-45-AK-3382 came at high speed in the opposite direction dashed against the bicycle in which the petitioner was proceeding causing him fracture in his right leg and grievous injuries all over his body. The accident occurred only due the rash and negligent driving of the driver of the first respondent heavy vehicle. At the time of the accident, the petitioner was aged about 40 years and by doing painting contract work was earning a sum of Rs.9,000/- per month. Due to the injuries suffered in the accident, the petitioner finds difficulty in climbing staircase and to walk or stand for long duration. Due to the injuries suffered by him, he is unable to carry on his avocation of painting work resulting in loss of income to him. Thus, the petitioner seek for a sum of Rs.5,00,000/- as compensation from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the Second respondent-Insurance Company by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The claim of the petitioner about his age, avocation and income is disputed. The accident occurred only due to the negligence of the petitioner as he suddenly crossed the road without noticing the oncoming vehicle in the main road. The claim of the petitioner is exorbitant. Thus, the second respondent-Insurance Company sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical experts were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P13 to prove their claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the negligence of the first respondent heavy vehicle driver alone caused the accident, passed award for a sum of Rs.2,73,360/- as compensation to the petitioner. Aggrieved over the said finding of the Tribunal, the Second respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the second respondent-Insurance Company and the learned counsel appearing for the petitioner/claimants and perused the materials available on record.

8. The learned counsel appearing for the appellant-Insurance Company contends that the Tribunal erred in fixing the monthly income of the petitioner at Rs.6,000/- without any basis. The Tribunal erred in adopting the multiplier method to assess the loss of income suffered by the petitioner without acceptable evidence. The amount awarded by the Tribunal under different heads is highly excessive. Hence, the second respondent-Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal.

9. Per contra, the learned counsel appearing for the petitioners/claimants contended that the accident occurred due to the negligence of the first respondent lorry driver and on the available evidence on record, the Tribunal has passed an award granting just and fair compensation to the petitioner and there is no valid ground made out by the second respondent-Insurance Company to interfere with the award passed by the Tribunal. Hence, the petitioners/claimants seeks dismissal of the appeal.

10. The petitioner, who deposed as P.W.1 clearly stated that on 02.10.2008 at about 10.30 a.m., while he was riding his bicycle in Thirumanur Road along with his friend Vijayakumar as pillion rider, the Lorry bearing Registration No.TN-45-AK-3382 came at high speed driven in a rash and negligent manner, in the opposite direction dashed against the bicycle resulting in grievous injuries to him. The petitioner also produced Ex.P1 First Information Report as well as Ex.P8 Final Report filed by the police after investigation alleging that the driver of the first respondent lorry driver alone caused the accident due to his negligence. It is clear from the evidence of P.W.1 as well as the contents of Ex.P1 First Information Report and Ex.P8 Final Report that the negligence of the first respondent lorry driver alone caused the accident. It is clear from Ex.P7 Motor Vehicle Inspector's report that there is no mechanical defect in the vehicle. Further, the respondents has not examined the driver of the offending vehicle or any other person to disprove the version of P.W.1 about the manner in which the accident took place. In such circumstances, the Tribunal has rightly fixed the negligence on the part of the first respondent lorry driver alone resulting in the accident.

11. The petitioner claims that by doing painting contract work he was earning a sum of Rs.9,000/- per month. But now, due to the fracture suffered by him in his right leg and other grievous injuries suffered, he is unable to attend to his avocation of painting work. The petitioner states that he was aged about 40 years at the time of the accident. The petitioner produced Ex.P9 and Ex.P10 identity card and member card issued by the Tamil Nadu Building Workers Central Association and Tamil Nadu Agriculture Labour Protection and Welfare Association. In Ex.P9, the age of the petitioner is mentioned as 36, while Ex.P10 the age of the petitioner is mentioned as 45. Taking

into consideration the above said documents and the averments in the claim petition that the petitioner was aged 40 years, his age has been fixed by the Tribunal as 46. No ground is made out to alter the said conclusion of the Tribunal.

12. The Tribunal on the basis of available evidence found that the claim of the petitioner that he was earning Rs.9,000/- per moth from his profession is not established. Considering the fact that the petitioner was employed as a painting contractor, the Tribunal fixed the notional monthly income at Rs.6,000/-. The Tribunal, on the basis of Ex.P2 Accident Register copy and Ex.P3 Medical opinion certificate as well as Ex.P11 disability certificate, held that the petitioner has suffered partial permanent disability at 26%. There is no other evidence about the disability suffered by the petitioner. In such circumstances, the conclusion of the Tribunal fixing the monthly notional income of the petitioner as Rs.6,000/- and the physical disability at 26% appears to be just and proper. Even though, P.W.2 Doctor who examined the petitioner and issued Ex.P11 disability certificate fixed the disability at 34%, P.W.2 has not furnished any calculation sheet for the same. Admittedly, P.W.2 has not given treatment to the petitioner. In such circumstances, the Tribunal is justified in fixing the disability at 26% and found that due to the injuries suffered by him, he is not able to attend to his work and applied multiplier method in fixing the compensation. Accordingly, the Tribunal awarded a sum of Rs.2,43,360/- towards loss of income. The amount awarded by the Tribunal under the different heads is as follows.

Permanent Disability	-	Rs.	2,43,360.00
Pain and sufferings	-	Rs.	20,000.00
Transportation & Extra-nourishment	-	Rs.	10,000.00
Total			Rs. 2,73,360.00

13. Taking into account the fact that the accident occurred on 02.10.2008, the amount arrived at by the Tribunal appears to be just and fair. There is no ground to interfere with the same. The claim of the Insurance Company that the multiplier method should not be adopted is unsustainable since the petitioner as a painter will find difficulty in carrying on his work, due to the injuries suffered in the accident. As stated by P.W.2 Doctor, the difficulties faced by the petitioner in standing and walking for long time and in climbing staircase, will prevent him from carrying on his avocation of painting work to some extent. In such circumstances, as he will suffer loss of income, it is appropriate to compensate him by adopting multiplier method. As stated above, the Tribunal has adopted the correct multiplier

and also fixed the notional monthly income in a just manner. The amount awarded by the Tribunal under the different heads is also fair and just. In such circumstances, it is apparent that the appellant-Insurance Company has not made out any valid case to set aside the award passed by the Tribunal. However, the appeal fails and the same is dismissed.

14. In the result, this appeal is dismissed. No costs. The award passed by the Tribunal dated 16.06.2011 made in MCOP.No.95 of 2010 on the file of the Motor Accident Claims Tribunal/Sub Judge, Perambalur, is hereby confirmed. The appellant Insurance Company is directed to deposit the entire Award amount of Rs.2,73,360/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the legal heirs of the first respondent/petitioner, namely, respondents 3 to 7 are entitled to equal share in the award amount. The respondents 3 to 7 are permitted to withdraw their respective share with accrued interest by filing necessary application before the Tribunal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Sub Judge,Perambalur.

2.The Section Officer, सत्यमेव जयते
VR Section, High Court,
Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.22958

+1cc to Mr.S.Kamadevan, Advocate SR.No.22169

C.M.A.No.3270 of 2011

RK(CO)
GN(27/04/2018)