

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.351 of 2016

S.Naresh Kumar
Claimant

.. Appellant /

..vs..

1.K.Thangavel
S/o.Karuppusamy

2.K.Thangavel
S/o.Karuppu Nadar

3.United India Insurance Company Ltd,
Rep. by its General Manager,
No.5, Big Bazaar Street,
Dharapuram.

...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 27.10.2005 made in MCOP.No.595 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent
No.3 : Mr.D.Baskaran

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 27.10.2005 made in MCOP.No.595 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode, the petitioner/claimant 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 26.08.2012, around 2.00 p.m., as the petitioner was riding his Motor Cycle bearing Registration No.TN-33-AP-5277, along with his wife as pillion rider, in Kangayam to Erode Road, near Arachalur Thiruvalluvar Nagar, proceeding on the extreme left side of the road, A Tempo Van bearing Registration No.TN-39-D-2652 came at high speed in the opposite direction dashed against the petitioner's two wheeler causing grievous injuries to the petitioner, which his wife suffered fatal injuries. The petitioner was aged about 29 years and by working as car driver was earning a sum of Rs.15,000/- per month. Due to the injuries suffered by him, he is unable to attend to his avocation as driver and suffered loss of income. The accident occurred only due to the negligence of the first respondent driver who was driving the said tempo van at the time of occurrence. Hence, the petitioner seeks a sum of Rs.15,00,000/- from the respondents 2 and 3, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the first respondent/driver of the vehicle contends that he possessed valid driving licence and the vehicle was insured with the third respondent Insurance Company. The accident occurred only due to the negligence of the petitioner, who was riding a two wheeler as he suddenly tried to cross the road. The first respondent is not liable to pay any compensation to the petitioner. Thus, the first respondent sought for dismissal of the petition.

5. The 3rd respondent/Insurance Company, which opposed the claim of the petitioner by filing counter contends that the accident does not occur in the manner alleged by the petitioner. The first respondent was driving the tempo van at normal speed, but the petitioner who came at high speed on the wrong side of the road, lost control and dashed against the second respondent Tempo Van. Hence, the petitioner alone is responsible for the accident. As such, the petitioner is not entitled to claim any compensation. As the petitioner himself is the tort-feaser, the third respondent Insurance company sought for dismissal of the petition.

6. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical expert was examined as P.W.2, and produced documents Ex.P1 to Ex.P32 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

7. The Tribunal, on the basis of materials available on record, found the driver of the second respondent van alone caused the accident and awarded a sum of Rs.4,51,000/- as

compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

8. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

9. The learned counsel appearing for the petitioner/claimant contends that the Tribunal failed to appreciate the evidence properly in arriving at the quantum. The Tribunal failed to consider the age of the petitioner as 29 years and was getting a sum of Rs.15,000/- per month as income by working as driver. The Tribunal ought to have applied the multiplier method in calculating the loss due to the disability suffered by the petitioner. The petitioner is unable to function as driver, due to the injuries suffered by him, inspite of the evidence let in by the petitioner, the Tribunal failed to assess the damage due to the disability at Rs.3,000/- per percentage. The amount provided under different heads is very meager. Thus, the petitioner seeks to enhance the quantum by entertaining the appeal.

10. Per contra, the learned counsel appearing for the third respondent-Insurance Company contends that the accident does not occur due to the negligence of the first respondent, but only due to the careless driving by the petitioner himself. The petitioner has not suffered any functional disability and as such the quantum of compensation awarded by the Tribunal itself is on the higher side and no ground is made out to enhance the same. Thus, the third respondent sought for dismissal of this appeal.

11. The petitioner states that as he was proceeding in his two wheeler along with his wife, the first respondent driven Tempo Van bearing Registration No.TN-39-D-2652 came at high speed and dashed against the two wheeler resulting in the accident. It is apparent from Ex.P1 First Information Report that the police have registered the case against the first respondent only. Further after completing the investigation, the police also laid charge sheet against the first respondent as evidenced by Ex.P13 charge sheet. It is also clear from Ex.P4 and Ex.P5 Motor Vehicle Inspector's report that the accident does not occur due to any mechanical defect in either of the vehicles. Thus, it is clear from the oral evidence of P.W.1 as well as the contents of Ex.P1 First Information Report and copy of the Ex.P13 Charge Sheet that the negligence on the part of the first respondent alone caused the accident. Even though the respondents disputed the claim of the petitioner about the manner in which the occurrence took place, the respondents has not let in any oral evidence to contradict the version given by P.W.1 about the accident. As such, the oral evidence of P.W.1 is not contradicted. Further, the police have registered the case against the first respondent only. It is therefore apparent

that the petitioner has clearly established that the negligence on the part of the first respondent alone caused the accident.

12. The petitioner stated that he suffered fracture in his right leg, right hand and grievous injuries on his head. The petitioner further states that he was employed as a car driver earning a sum of Rs.15,000/- per month. The petitioner states that he took treatment for more than three months for the injuries suffered by him. The petitioner produced the copy of the Accident Register as Ex.P7 and Wound Certificate issued to him as Ex.P8. It is apparent from Ex.P9 to Ex.P12, the copy of the discharge summaries that he underwent treatment as in patient for various periods from 26.08.2012 to 11.11.2012. The petitioner being a driver have suffered fracture, the same would have prevented him from attending to his work at least for nine months. The petitioner claimed that he was earning a sum of Rs.15,000/- per month. However, he has not produced any documentary proof to prove his claim. The petitioner also did not disclose as to when he was employed and also failed to examine any one to prove that he was permanently employed as driver. It is clear from Ex.P27 driving licence that the injured petitioner was having valid driving licence. In such circumstances, the Tribunal fixed the notional income at Rs.6,000/-. Pointing it out the learned counsel appearing for the petitioner relying upon the Ruling of the Apex Court reported in 2004 (2) TN MAC 680 (SC) in KALADEVI & OTHERS Vs. BHAGWAN DAS CHAUHAN AND OTHERS, pleaded that being a driver, the nominal income should be fixed at Rs.9,000/- p.m.,. In the said Ruling, the Apex Court has held that the deceased in that case being a heavy vehicle driver and as driver job is skilled job, the income has to be taken at Rs.9,000/- per month. In the case on hand, the petitioner has not produced any evidence to show that the petitioner was employed as a driver at regular basis. In such circumstances, it will be appropriate to fix the notional income of the petitioner at Rs.8,000/- per month. As such due to the injuries suffered by the petitioner, he could not have attended to his work for nine months. Hence, the loss of income during treatment period is calculates as Rs.8,000/- x 9 months Rs.72,000/-.

13. The petitioner further contends that he is unable to carry on his avocation of driving due to the injuries suffered by him. The Tribunal on the basis of the available evidence fixed the disability at 40% and applying the percentage method awarded a sum of Rs.90,000/- as compensation for disability suffered by the petitioner. The learned counsel appearing for the petitioner contends that the Tribunal ought to have applied multiplier method, since the petitioner is unable to function as a driver and suffered total functional disability. To prove the same, the petitioner examined the Doctor who assessed the disability suffered by him as P.W.2 and he produced Ex.P28 disability certificate issued by him. The Doctor also produced

Xray as well as CT Scan and report as Ex.P29 to Ex.P31. According to P.W.2 Doctor, due to the injuries suffered by the petitioner, he has suffered 45% partial permanent disability. Even though the petitioner contend that he is not able to do his driving work, there is no evidence to show that due to the fracture suffered by the petitioner, he is not able to do his driving work. There is nothing on record to show that any mal-union of the fractured bone has occurred. As such, the claim of the petitioner for adopting the multiplier method is not warranted. However, considering the fact that the petitioner suffered 45% of permanent disability, it will be appropriate to compensate him at the rate of Rs.3000/- per percentage instead of Rs.2,000/- awarded by the Tribunal. Thus, the disability compensation is calculated as 45% x Rs.3,000/- = Rs.1,35,000/-.

14. The petitioner has suffered fracture and grievous injuries as stated above and he has undergone treatment as inpatient from 26.08.2012 to 11.11.2012. Thus, apparently he took treatment as in patient for nearly three months . As such, considering the nature of injuries and the period of treatment undergone by him, it will be appropriate to award Rs.12,000/- towards attender charges. Further, taking in to consideration, the petitioner has suffered 45% partial permanent disability and also he had suffered injury on his right leg, right hand and grievous injuries on his head, he would have suffered heavy pain and mental agony. Thus, for pain and sufferings, the amount is enhanced to Rs.1,00,000/- stead of Rs.50,000/- awarded by the Tribunal. Considering the nature of injuries suffered by the petitioner and the consequential effect of the same, a sum of Rs.50,000/- is granted towards loss of amenities of life. Thus, the amount awarded by the Tribunal is modified as follows:-

Sl No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Loss of income during treatment period	24,000.00	72,000.00
2.	Transport Charges	5,000.00	10,000.00
3.	Extra-nourishment	15,000.00	25,000.00
4.	Damage for cloths	2,000.00	2,000.00
5.	Medical Expenses	1,90,000.00	1,90,000.00
6.	Pain and sufferings	50,000.00	1,00,000.00
7.	Permanent disability	90,000.00	1,35,000.00
8.	Loss of Amenities	-	50,000.00
10.	Loss of earning power	75,000.00	-
11.	Attender charges	-	12,000.00

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
	Total	4,51,000.00	5,96,000.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.5,96,000/-.

15. In the result, this appeal is partly allowed. No costs. The sum of Rs.4,51,000/- awarded by the Tribunal dated 27.10.2005 made in MCOP.No.595 of 2013 on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode, is hereby enhanced to Rs.5,96,000/-. The third respondent Insurance Company is directed to deposit the entire modified award amount of Rs.5,96,000/- with interest at the rate of 7.5% p.a. from the date of filing the claim petition till the date of deposit of 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 petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Special Subordinate Judge
The Motor Accident Claims Tribunal,
Erode.

+1 cc to Mr.D.Bhaskaran Advocate sr 19960

+1 cc to Mr.S.Kaithaimalai kumran Advocate sr 20008

C.M.A.No.351 of 2016

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