

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1720 of 2014
and M.P.No.1 of 2014
and CMP.No.12937 of 2017

The Divisional Manager
The New India Assurance Co.Ltd.,
106, Big Street, Tiruvannamalai ...Appellant/2nd respondent.

VS

1.Govindan @ Sigamani ... 1st Respondent/Petitioner

2.Seelambarasan ... 2nd Respondent /1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 26.03.2014 made in MCOP.No.1443 of 2013 on the file of the Motor Accident Claims Tribunal, Special Court, Tirupattur.

For appellant : : Mr.M.Krishnamoorthy

for Respondents : : Mr.PA.Sudesh Kumar for R1.
R2-Set exparte

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Insurance company, challenging the judgment and decree dated 26.03.2014 made in MCOP.No.1443 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Tirupattur.

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 17.01.2010 at

about 09.30 p.m., while the Petitioner was riding his motor cycle bearing Reg.No.TN-23-AQ-0760 along with his friend in Jolarpet to Tirupattur Main Road, while going near Punjabi Dhaba Hotel, Donbosco Nagar, the 1st respondent car bearing Reg.No.TN-32-5784 came at high speed, dashed against the two wheeler in which the Petitioner was proceeding, causing him multiple grievous injuries and also fracture in his right leg. The accident occurred due to negligence of the 1st respondent vehicle driver only. The Petitioner was aged 27 years and by working as a Driver, was getting Rs.12,000/- per month. Due to the injury, the Petitioner's future prospects is affected. He is taking continuous treatment even at the time of filing MCOP. Thus, the Petitioner sought for a sum of Rs.10,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident occurred only due to negligence of the Petitioner himself and as such, he is not entitled to seek any compensation. The Petitioner drove the vehicle without valid driving licence, lost control and dashed against the car coming in the opposite direction. The claim of the Petitioner about his age, avocation and injuries is denied. The vehicle driven by the Petitioner was not insured. The claim of the Petitioner is exorbitant. Thus, the 2nd respondent/Insurance company sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.26 to prove his claim. On the side of the 2nd respondent, R.W.1 was examined, but no document was produced. After analysing the evidence on record, the Tribunal found negligence of the 1st respondent vehicle driver alone caused the accident and passed an award for a sum of Rs.11,70,000/- payable by the 2nd respondent to the Petitioner.

5. Being aggrieved over the award passed by the Tribunal, the 2nd respondent/Insurance company has come forward with the present appeal.

6. The learned counsel for the 2nd respondent/Insurance company contends that the negligence of the Petitioner alone contributed to the accident and as he was driving the vehicle under the influence of alcohol, he is not entitled to seek compensation. The Tribunal wrongly fixed the monthly income of the Petitioner who was employed as Sepoy driver in the Indian Army at Rs.32,500/- and awarded higher compensation. The amount awarded by the Tribunal under different heads is excessive. There is no evidence to show that the Petitioner suffered due to loss of promotional prospects. The award passed by the Tribunal

is highly excessive. Thus, the 2nd respondent/Insurance company/appellant sought for setting aside the award passed by the Tribunal by entertaining the appeal.

7. Per contra, the learned counsel for the Petitioner/claimant contends that the Petitioner having suffered fracture and multiple injuries was unable to attend to his army duties and suffered loss of income. The Petitioner lost promotional prospects as he was found to be medically not fit and in such circumstances, the award passed by the Tribunal is just and proper and there is no need to interfere with the same. Thus, the Petitioner sought for dismissal of the appeal.

8. The Petitioner who admitted that he was a Sepoy driver in the Indian Army deposed as P.W.1 and stated that the accident occurred only due to negligence of the 1st respondent vehicle driver. The xerox copy of the driving licence of the Petitioner is produced as Ex.P.8. The Insurance coverage of the Petitioner is produced as Ex.P.5. Therefore, it is clear from the same that the Petitioner was possessing valid driving licence and he was employed as a Sepoy driver in the Indian Army. Therefore, the contention of the respondent /Insurance company that the Petitioner was not possessing valid driving licence has to fail.

9. The Petitioner produced the copy of the FIR registered as Ex.P.1. The contents of FIR corroborates the version of accident given by P.W.1. Therefore, it is clear from the contents of Ex.P.1-FIR and the evidence of P.W.1 that the accident occurred due to negligence of the 1st respondent driver only.

10. The driver of the 1st respondent did not come forward before the Tribunal to contest the matter. The official witness examined on the side of the 2nd respondent/Insurance company as R.W.1 stated that the Petitioner drove his vehicle in a drunken mood and he negligently tried to cross the road and met with an accident. Thus, the 2nd respondent contends that they are not liable to pay compensation.

11. Admittedly, the Police have registered the case against the driver of the 1st respondent car only as per Ex.P.1-FIR, and no case is registered against the petitioner for drunken driving. Therefore, it is clear from Ex.P.1-FIR contents that the accident occurred only due to rash and negligent driving by the 1st respondent car driver. As such, the Tribunal has correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident and the same needs no interference.

12. The Petitioner claims that he was aged 27 years at the

time of the accident and employed in Indian Army as Sepoy Driver, earning Rs.12,000/- per month. It is clear from Ex.P.24-Statement of Accounts that the last drawn salary of the Petitioner was Rs.22,537/- per month. In the absence of any other material, on the basis of Ex.P.24, the monthly income is fixed at Rs.22,537/-.

13. The Petitioner stated that he suffered fracture and took treatment as inpatient in CMC Hospital, Vellore, and Military Hospital, Chennai, and the same is evidenced by Ex.P.11 to Ex.P.18. He also produced the X ray as Ex.P.20 and Ex.P.21.

14. The Petitioner examined the doctor as P.W.2 and according to him, the Petitioner suffered 45% permanent disability due to fracture of tibia and fibula of right leg. It is stated by P.W.2 that steel rods were fixed to unite the fractured bones and later removed. However, the Petitioner produced copy of the Army Medical Board proceedings as Ex.P.26 wherein the Permanent disability is fixed at 20%. Further P.W.2 doctor has not treated the Petitioner nor has he enclosed any calculation sheet along with Ex.P.19/ disability certificate. As such, the Tribunal has correctly fixed the permanent disability suffered by the Petitioner at 20% on the basis of Ex.P.26-Army Medical Board Proceedings. The same needs no modification. Admittedly, the Petitioner continued in the Army even after the accident. Thus, he has not lost his job. Therefore, it cannot be stated that he is suffering from functional disability. As such, there is no need to adopt multiplier method as done by the Tribunal. As such, the Petitioner is entitled to be compensated at the rate of Rs.3000/- per percentage of disability. The calculation for the disability compensation is as under:-

$$\text{Rs.3000/-} \times 20\% = \text{Rs.60,000/-}$$
According to the Petitioner, due to the disability suffered by him, his terminal and pensionary benefits and extension of service by two years after completion of 17 years of basic service is affected. It is pointed out by the Petitioner counsel that the Petitioner has been placed in "Low Medical Category" in the Army service. Thus, the Petitioner seeks to compensate the future loss of income.

15. In such circumstances, it is apparent that as the Petitioner was 27 years old at the time of the accident, his normal promotion and other benefits would have been affected. Hence, it will be appropriate to provide Rs.1,00,000/- instead of Rs.50,000/- towards "Loss of amenities" and Rs.75,000/- towards "Pain and suffering" instead of Rs.50,000/-. The Tribunal provided Rs.43,406/- towards Medical Expenses as evidenced by Ex.P.23 Medical Bills. The said compensation is just and proper and the same is rounded off to Rs.44,000/-. Considering the nature of injury suffered by the Petitioner and

that the Petitioner would have been in need of an Attender to help him in his daily routine, it will be appropriate to award Rs.25,000/- towards "Attender charges". The tribunal awarded Rs.6,000/- towards damages/repairing charges and the same is enhanced to Rs.11,000/-.

16. The Petitioner stated that due to injury suffered, he is taking treatment by availing leave. Therefore, the Tribunal keeping in mind the said claim, awarded Rs.1,35,222/- i.e., six months salary at the rate of Rs.22,537/- per month [Rs.22,537/-x 6 = Rs.1,35,222/-]. The said compensation is just, fair and reasonable. Hence, the same is confirmed. Thus, the modified compensation awarded by this court is as under:-

Sl.N o.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this court (Rs.)
1.	Loss of income/disability	1,35,222/-	1,35,222/-
2.	Future loss of income	8,65,420/-	60,000/-
3.	Extra Nourishment	10,000/-	30,000/-
4.	Transportation charges	10,000/-	20,000/-
5.	Medical expenses	43,406/-	44,000/-
6.	Pain and suffering	50,000/-	75,000/-
7.	Loss of amenities	50,000/-	1,00,000/-
8.	Repairing charges	6,000/-	11,000
9.	Attender charges		25,000/-
	Total	11,70,048/-	5,00,222/-

17. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed;

(ii) The award amount is reduced to Rs.5,00,222/- from Rs.11,70,000/-.

(iii) The award amount will carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

(iv) This court, by order dated 01.08.2014, directed the appellant/Insurance company to deposit a sum of Rs.8,00,000/- with proportionate interest and cost, less the amount already deposited. Therefore, the appellant-Insurance Company is entitled for refund of excess amount lying in deposit, after satisfying the award of this court.

(v)The claimant/1st respondent is entitled to withdraw the award amount along with accrued interest on filing proper application before the Tribunal. The Tribunal shall pass necessary orders for disbursal of the award amount. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

nvsri
To

1. The Motor Accidents Claims Tribunal,
Special Subordinate Judge, Tirupattur.
2. The Section Officer, V.R.Section, High Court, Madras.

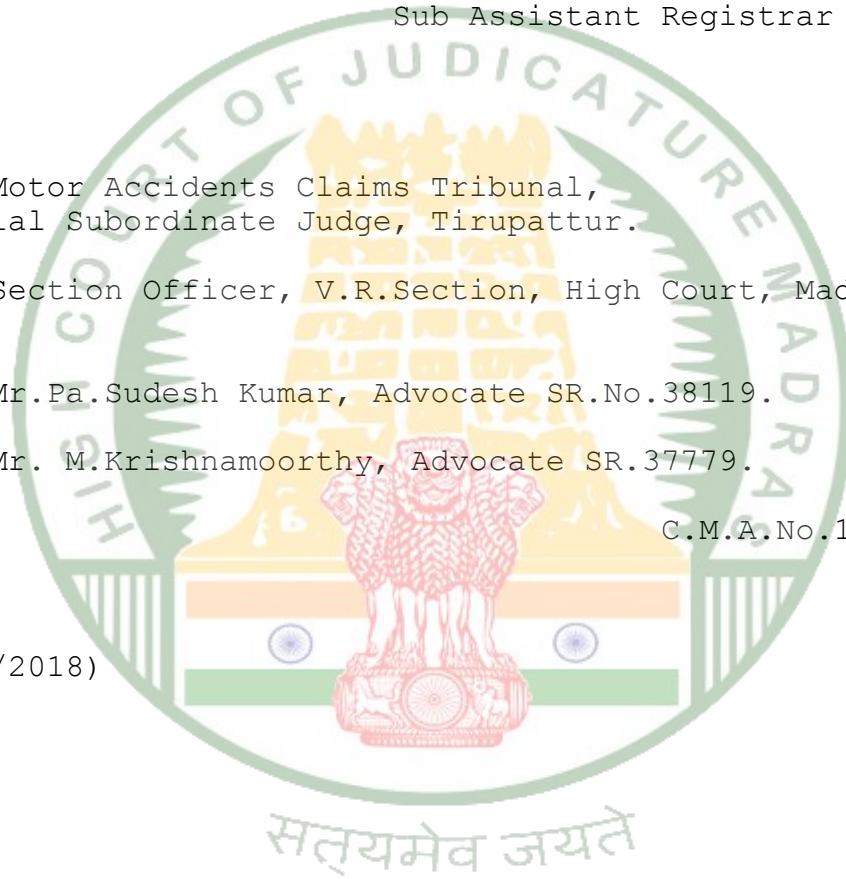
+1 cc to Mr.Pa.Sudesh Kumar, Advocate SR.No.38119.

+1 cc to Mr. M.Krishnamoorthy, Advocate SR.37779.

C.M.A.No.1720 of 2014

CA (CO)

GMV (30/10/2018)



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