

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.249 of 2018
and CMP.No.2798 of 2018
and CMP.No.10367 of 2018

United India Insurance Co.Ltd.,
HUB, Dr.Nanjappa Road
Coimbatore

..Appellant/
3rd respondent.

-Vs-

1.K.Nageswara Babu

..Respondent No.1
/Petitioner

2.P.Madeswaran

3.G.Srinivasan

..R2 and R3/Respondent
Respondents 1 and 2.

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the Judgment and decree dated 14.06.2017 made in M.C.O.P.No.2045 of 2015 on the file of Motor Accident Claims Tribunal Special Subordinate Judge, Coimbatore.

For appellant : : Mr.D.Bhaskaran
For Respondents : : Mr.C.Veeraraghavan for R1.
R2-Exparte before Tribunal
R3-No appearance.

J U D G M E N T

The Appellant is the Insurance company, who is the 3rd respondent before the Tribunal, has filed this appeal challenging the Judgment and decree dated 14.06.2017 made in M.C.O.P.No.2045 of 2015 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 06.01.2015 while he was riding his motor cycle bearing

Reg.No.TN-39-AH-9250 from Vellaikinar to Vagarayampalayam at about 11.30 a.m., as he was going in Neelambur bye-pass opposite to Kaviya Weigh Bridge, the lorry bearing Reg.No.TN-29-AZ-3264 came at high speed, in the opposite direction, overtook the petitioner's two wheeler, suddenly turned to the left side, without any signal and dashed against the Petitioner's vehicle due to which the petitioner fell down and back side wheel of the lorry crushed on the right leg of the petitioner below his knee and he suffered severe injuries on his hip and all over the body. The accident occurred only due to negligence of the 1st respondent lorry driver. The Petitioner suffered injuries in his pelvis, cervical spine and later oblique fracture tibia. The Petitioner was aged 29 years and by working as Sales Engineer, was earning Rs.15,000/- per month. Due to the injury suffered, the Petitioner is unable to attend to his normal avocation, resulting in loss of income to him. The Petitioner seeks a sum of Rs.12,50,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 3rd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. It was only due to negligence of the Petitioner himself, he met with the accident. The claim of the Petitioner about his age, avocation and income is denied. As the owner and insurer of the two wheeler being not added as party is fatal to the Petitioner's claim. Thus, the 3rd 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.W.2 and P.W.3, produced documents Ex.P.1 to Ex.P.24 to prove his claim. The respondent did not let in any oral or documentary evidence. Disability Certificate was marked as Ex.C.1. After analysing the evidence on record, the Tribunal found negligence of the 1st respondent alone caused the accident, passed an award for a sum of Rs.10,94,860/- payable by the 2nd and 3rd respondents who are the owner and insurer of the Lorry. Aggrieved over the said finding of the Tribunal, the 3rd respondent/Insurance company has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The learned counsel for the appellant/3rd respondent contends that the Tribunal failed to appreciate the evidence on record properly. The Tribunal erred in taking 40% disability for computation without any reason. The Tribunal wrongly adopted multiplier method for calculating the disability compensation even though the petitioner has not suffered any functional disability. The amount provided by the Tribunal under different heads is excessive. The appellant thus 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 Tribunal, on the basis of evidence on record correctly fixed the disability at 40% and there is no need to modify the same. The Tribunal, having fixed the negligence on the 1st respondent driver, passed just and reasonable award, which needs no interference. The Petitioner/claimant sought for dismissal of the appeal.

8. It is only quantum appeal. Both sides did not seriously challenge the conclusion of the Tribunal regarding the negligence aspect. The Petitioner, who deposed as P.W.1 clearly stated about the manner in which the accident occurred. The respondents have not chosen to let in any oral evidence to contradict the version of accident given by P.W.1. Further, the Police have registered Ex.P.1-FIR against the 1st respondent vehicle driver only. Further on completion of investigation, the Police laid charge sheet Ex.P.2 against the 1st respondent vehicle driver only. Further the driver of the 1st respondent admitted his guilt and paid fine amount as evidenced by Ex.P.7-Extract of Fine diary. Thus, it is clear from P.W.1 oral evidence as well as contents of Ex.P.1-FIR, Ex.P.2-Charge sheet and Ex.P.7-Extract of Fine diary that the 1st respondent vehicle driver alone caused the accident. The 3rd respondent has not let in any evidence to contradict the claim of the Petitioner about the nature of accident and manner in which it took place. As such, the Tribunal is justified in concluding that the negligence of the 1st respondent vehicle driver alone caused the accident. The same needs no interference.

9. The Petitioner stated that he suffered the following injuries:-

(i) crush injury right leg with 111 B fracture. (ii) Tibia middle third lower third junction. (iii) undisplaced fracture; fibula proximal third/middle third junction with skin lost. It is evident from Ex.P.8-Wound Certificate that the Petitioner has suffered multiple grievous injuries. It is clear from Ex.C.1-disability certificate issued by CMC Hospital, Coimbatore, that the Petitioner suffered 20% permanent disability. According to the Petitioner, as the right leg ankle portion is crushed, he is not in a position to continue his job. The Tribunal, after considering the evidence on record, fixed the partial permanent disability at 40%. However, in Ex.C.1, disability certificate issued by Medical Board, it is only fixed as 20%. In such circumstances, taking into consideration Ex.P.8 Wound certificate as well as Ex.P.9 and Ex.P.10-Discharge summary, it will be appropriate to fix the disability at 15%.

10. The Petitioner claims that he is employed as Sales Engineer in a private concern, earning Rs.15,000/- per month. P.W.2, staff of the said concern clearly stated that the

petitioner was paid Rs.10,000/= per month. The Petitioner also produced his educational certificates as Ex.P.17 to Ex.P.19 and the appointment letter issued by the employer as Ex.P.20 and Bank account statements has been produced as Ex.P.21 and Ex.P.22. As the petitioner was aged 29 years, the multiplier to be applied is 17. Taking note of all the above particulars, it will be appropriate to fix Rs.10,000/- as monthly salary of the injured. Accordingly, the future loss of income is calculated as under:-

10,000/- x 12 = Rs.1,20,000/-

1,20,000 x 15% x 17 = Rs.3,06,000/-.

11. Considering the nature of injury and period of treatment undergone by the Petitioner, he would have needed the help of an attender atleast for three months. Hence, at the rate of Rs.5000/- per month, (5000 x3) Rs.15,000/- is awarded under the head "Attender Charges". Further, towards future medical expenses, this court is inclined to provide Rs.40,000/- instead of Rs.50,000/- awarded by the Tribunal. In addition to the above heads, the Tribunal has provided compensation amounts under different heads, which this court is of the considered is just and reasonable and the same requires no interference.

12. In view of the foregoing discussion, the modified compensation is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this court
1.	Future loss of earning	8,16,000/-	3,06,000/-
2.	Medical bills	1,03,860/-	1,03,860/-
3.	Future medical expenses	50,000/-	40,000/-
4.	Pain and suffering	50,000/-	50,000/-
5.	Loss of amenities	50,000/-	50,000/-
6.	Transportation	10,000/-	15,000/-
7.	Extra Nourishment	10,000/-	10,000/-
8.	Damage to clothing	5,000/-	5,000/-
9.	Attender charges	---	15,000/-
	Total	10,94,860/-	5,94,860/-
			Rounded off to Rs.
			5,95,000/-

13. In the result,

(i) The Civil Miscellaneous Appeal is allowed;

(ii) The quantum of award is reduced to Rs.5,95,000/- from

Rs.10,94,860/-.

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

(iv) This court by order dated 20.02.2018 in CMP.No.2798 of 2018 in CMA.No.249 of 2018, directed the appellant/insurance company to deposit 50% of the award amount together with interest and cost, deducting the amount already deposited. Therefore, the appellant/insurance company, after satisfying the award as modified by this court, is entitled for refund of excess amount, if any, lying in deposit.

(v) The claimant is entitled to withdraw the award amount along with accrued interest, by following necessary procedure before the Tribunal.

(vi) No costs. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal
/Special Subordinate Judge, Coimbatore.

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

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.46438

+1cc to Mr.D.Bhaskaran, Advocate SR.No.46417

C.M.A.No.249 of 2018

GMV (26/09/2018)

WEB COPY