

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2018

Coram

THE HON'BLE MR. JUSTICE S. BASKARAN

C.M.A.No.288 of 2018 and

G.Janakiraman

... Appellant /petitioner

Vs.

1.Private Secretary to Lt.Governor,
Raj Nivas, Pondicherry-605 001.

2. Director of Information Department,
Government of Pudhucherry.

..... Respondents

PRAYER Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Decree and Judgment order dated 13.03.2014 in M.C.O.P.No.4882 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Judge, Small Causes Court, Chennai.

For Appellant: :Ms.Ramya V.Rao

For Respondents :Mr.J. Kumaran

Government Advocate,Puducherry.

J U D G M E N T

The Petitioner/claimant has come forward with this appeal against the Decree and Judgment order dated 13.03.2014 in M.C.O.P.No.4882 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Judge, Small Causes Court, Chennai.

2.For convenience sake, the parties are referred to hereunder according to their litigative status before the tribunal.

3. The case of the petitioner is that on 25.06.2014 at about 07.00 hours, while the petitioner was riding his motor cycle bearing Registration No: TN21-Q-2660 and while proceeding in East Coast Road from Nemili to Mamallapuram road, a car bearing

Reg.No.PY-01-C-0001 came at high speed in opposite direction and dashed against the two wheeler in which the petitioner was proceeding, in the impact, the petitioner fell down and sustained injuries. It is stated that only due to negligence of the first respondent driver, the accident occurred. The petitioner was aged 31 years and he was earning Rs.500/- per day by working as a painter. He is not able to do his work due to injuries suffered by him. Hence the petitioner seeks a sum of Rs.7,00,000/- as compensation from the respondents.

4. On the other hand, opposing the claim of the petitioner, the 1st respondent filed his counter stating that he is not the owner of the vehicle bearing Reg.No.PY-01-C-0001 and the same belongs to the second respondent from 15.06.2001. Hence the first respondent sought for dismissal of the petition.

5.The second respondent stated that the vehicle does not belong to them and they are not necessary party in the proceedings. The second respondent denied the claim of the petitioner about his age, avocation, income. It is also stated that the 1st respondent that driver was going at normal speed and accident occurred not due to the negligence of the first respondent driver. As the vehicle belongs to Government of Pondicherry, there is no insurance coverage. The claim of the petitioner about the manner in which the accident occurred is denied. The second respondent sought for dismissal of the petition as the driver was not responsible for the accident.

6. Before the Tribunal, the petitioner/claimant examined himself as P.W.1 and the medical expert as P.W.2 and produced documents Ex.P.1 to Ex.P.9 to prove his claim. The respondents examined R.W.1 and R.W.2 and also produced Exhibit R.1 to prove their contention. The Tribunal on the basis of evidence available on record found that the driver of the 1st respondent is responsible for the accident and awarded a sum of Rs.1,80,000/- as compensation to the petitioner. Being not satisfied with the quantum of award, the petitioner has come forward with the present appeal.

7.The learned counsel for the appellant/petitioner contented that the Tribunal failed to consider medical evidence of P.W.2, which clearly states that the disability at 55% and went wrong in reducing the percentage of disability from 55% to 35% and awarded only Rs.2,000/- per percentage. The Tribunal ought to have considered the fact that the petitioner suffered functional disability resulting in loss of income to him. The amount awarded under various heads are very less. Thus, the

appellant/petitioner seeks to enhance the award amount by allowing the appeal.

8. On the other hand, opposing the claim of the petitioner for enhancement, the learned counsel for the respondents contended that the Tribunal erred in fixing negligence on the part of the second respondent car driver and also erred in awarding huge amount as compensation. The learned counsel for the respondents contend that the award passed by the Tribunal itself being exorbitant, there is no need or scope to enhance the quantum of the award passed by the Tribunal. Thus the respondents seek for dismissal of the appeal.

9. Heard both sides and perused the materials available on record.

10. The petitioner who suffered injury in the accident deposed himself as P.W.1 and stated that the accident occurred only due to negligent driving of the second respondent vehicle driver only. The Police have also registered case against the second respondent driver as evidenced by Ex.P.2- FIR.

11. On the other hand, the driver of the second respondent/Rw-1 states that the injured only caused the accident due to his negligence. According to him, the injured suddenly crossed the road without noticing the on coming vehicle in the opposite direction which had resulted in the accident; Even though Rw1 claims that the injured only crossed the road behind lorry. Further it is the duty of the driver of the car to take care and ride properly. Even though the police complaint would have been lodged by Rw-2 himself, there is no evidence to prove his claim that the lorry was standing near by his vehicle. As such the police have registered the case against the second respondent driver only. Thus taking into consideration the oral evidence of PW-1 as well as contents of Exhibit P1-FIR, it is apparent that the negligence on the part of the second respondent driver alone caused the accident. R.W.2 was examined on the side of the respondents and he stated that the accident occurred due to the negligence of the injured person. If really the accident occurred due to the negligence of the injured person, Police complaint would have been lodged by RW-2 himself. However, there is no evidence to prove his claim that the lorry was standing near by his vehicle. As such, the Police have registered the case against the second respondent driver only. Thus, taking into consideration the evidence of P.W.1 as well as contents of Ex.P.1- FIR, it is apparent that the negligence on the part of second respondent driver alone caused the accident.

12. The petitioner claims that he suffered functional disability as stated in the synopsis of the doctor who assessed the injury of the petitioner and issued P-9 disability certificate. P.W.- 2 states that the petitioner suffered fracture as mentioned in the certificate issued by him. According to Pw-2 the total disability is 55%. However, PW-2 has not treated the petitioner nor he furnished any calculation memo other than Exhibit P.9- disability certificate. As such, the Tribunal fixed the disability at 35% instead of 55% fixed by Pw-2 Doctor. Considering the reason stated by the Tribunal for restricting disability and in the absence of any material for not accepting the disability assessment at 55% given by Pw-2, this Court is inclined to confirm the disability suffered by the petitioner at 35% as fixed by the tribunal. However, the Tribunal assessed the disability at Rs.2,000/- per percentage. Considering the fact that the accident occurred on 25.06.2014 and the nature of injuries sustained by the petitioner, it is appropriate to award Rs.3,000/- per percentage. Thus, the amount awarded under the head "disability" is :- $35\% \times 3,000/- = 1,05,000/-$

13. The Tribunal has rightly awarded the amount under different heads. Considering the nature of injuries suffered by the petitioner resulting in 35% permanent disability, the petitioner would have undergone treatment continuously and he was not able to do his painting work which would have resulted in his loss of income.

14. Considering the fact that the petitioner was working as a painter and taking note of wages earned by him, it would be appropriate to fix the monthly income at Rs.5,000. In view of the injuries, suffered by him he would not be able to attend his work at least for three months. Hence, loss of income for the period of treatment is calculated as $\text{Rs.5,000} \times 3 = 15,000/-$

15. Considering the nature of injuries suffered by the petitioner resulting in the Petitioner suffering from partial permanent disability and the treatment period, it is clear that the Petitioner was not able to do his painting work which resulted in his loss of income. Taking note of the wages earned by him, it would be appropriate to fix the monthly income at Rs.5,000/-. Hence, towards "loss of income" for the period of treatment viz., for three months, $\text{Rs.5,000/-} \times 3 = \text{Rs.15,000/-}$.

13. Considering the overall materials on records, this Court finds that the amount awarded by the Tribunal needs to be enhanced. Hence, for the above said reasons the award passed by the Tribunal is enhanced as follows.

S.No	Particulars	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income during treatment	Rs.9,000	Rs.15,000
2	Extra Nourishment	Rs.15,000/-	Rs.15,000/-
3	Transportation/damage to clothing	Rs.2,000	Rs.2,000/-
4	Attendant charges	Rs.3,000	Rs.5,000
5	Medical Expenses	Rs.61,000	Rs.61,000
6	Pain and suffering, trauma	Rs.15,000	Rs.20,000
7	Disability 35% x 3,000	Rs.70,000	Rs.1,05,000
8	Loss of amenities	Rs.5,000	Rs.20,000
	Total	Rs.1,80,000/-	Rs.2,43,000/-

14. In the result, the Civil Miscellaneous Appeal is Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.2,43,000/- from Rs.1,80,000/-

(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 second respondent is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the appellant/claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. In view of the order of this court dated 09.02.2018 passed in CMP.No.13696 of 2017 in CMA.No.SR.62994 of 2017, interest is waived off for the delay of 1057 days in filing the CMA.

(v) The Tribunal shall pass appropriate directions for the disbursement of the amount as stated supra on the filing of such application.

(vi) There will be no order as to costs in this appeal.

(vii) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

smn/nvsri
To

1.The Motor Accidents Claims Tribunal, VI Judge, Small Causes Court, Chennai.

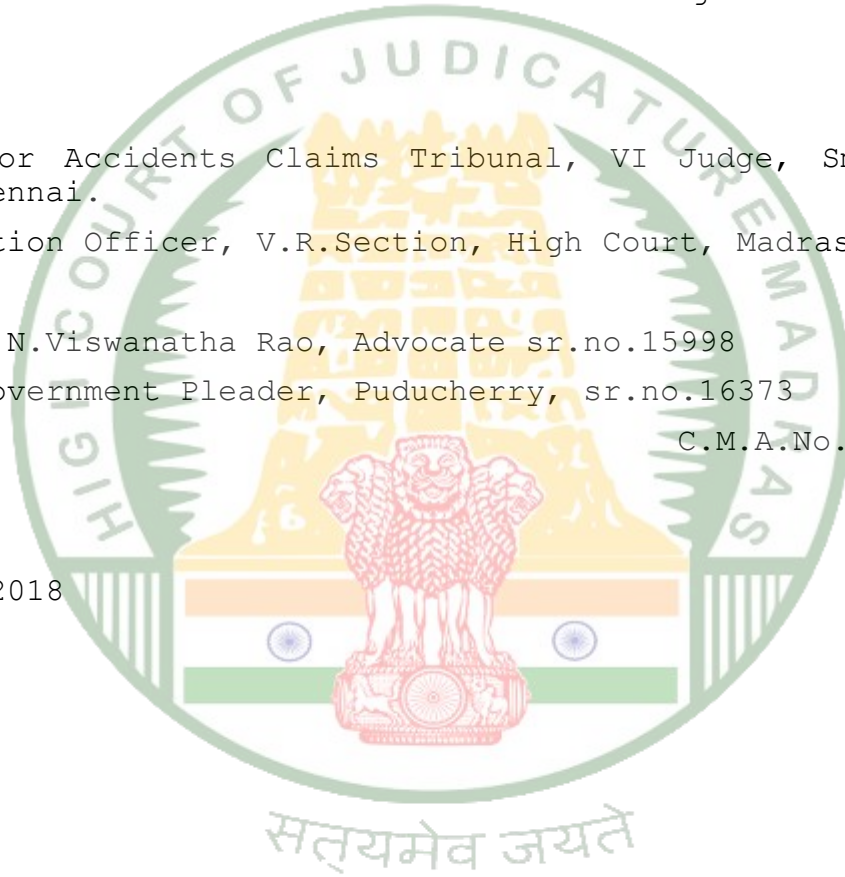
2.The Section Officer, V.R.Section, High Court, Madras.

+1cc Mr.A.N.Viswanatha Rao, Advocate sr.no.15998

+1cc to Government Pleader, Puducherry, sr.no.16373

C.M.A.No.288 of 2018

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