

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1797 of 2014

A.Ganesan

..Appellant/Petitioner

Vs.

1.T.Raju

2.The Branch Manager

United India Insurance Company Limited
Branch Office, 50 A, Pallivasal Street
Perambalur

..Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 30.01.2014 passed in M.C.O.P.No.1329 of 2010 on the file of Motor Accidents Claims Tribunal, Special Sub Judge-II, Salem.

For appellants : : Mr.M.Jothi Kumar
for Respondent : : Mr.T.Ravichandran for R2.
N appearance for R1.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/Petitioner, challenging the judgment and decree dated 30.01.2014 passed in M.C.O.P.No.1329 of 2010 on the file of Motor Accidents Claims Tribunal, Special Sub Judge-II, Salem.

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-Ganesan is that on 13.04.2010 at 5.45 p.m., while the Petitioner was proceeding in his two wheeler bearing Reg.No.TN-27-Q-7818 in Vellaiyur to Noothapur Road while going near Kulandaivel's land, another motor cycle bearing Reg.No.TN-46-J-3947 belonging to the 1st respondent and insured with the 2nd respondent came at high speed, dashed against the two wheeler in which the petitioner was proceeding, causing him multiple grievous injuries including fracture in the left lower leg. The accident occurred due to

negligence of the 1st respondent vehicle driver only. The Petitioner was aged 60 years and by carrying on milk supply as well as agricultural work was earning Rs.10,000/- per month. Due to the injury suffered, he was unable to do any other work and thus sought for a sum of Rs.7,00,000/- as compensation from the respondents who are the owner and insurer of the vehicle.

3. On the other hand, opposing the claim of the Petitioner/injured, by filing counter, the 2nd respondent/Insurance company disputed the claim of the Petitioner about the manner in which the accident occurred. The 1st respondent vehicle bearing Reg.No.TN-46-J-3947 was insured with the 2nd respondent, but the rider of the vehicle was not possessing valid driving licence. The Petitioner also did not possess valid driving licence. The amount claimed by the Petitioner is exorbitant. The insurer of the Petitioner's vehicle bearing Reg.No.TN-27-Q-7818 is a necessary party. The accident did not occur due to the negligence of the 1st respondent vehicle driver. Thus, the 2nd respondent sought for dismissal of the claim 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.28 to prove his claim. On the side of the 2nd respondent-Insurance company, R.W.1 and R.W.2 was examined, Exhibits R.1 was filed. By consent, Ex.S.1 was also marked. The Tribunal, after analysing the evidence on record, found negligence of the 1st respondent vehicle driver alone caused the accident and also the said driver was not possessing valid driving licence, and concluded that a sum of Rs.3,32,000/- payable as compensation to the Petitioner, by the 2nd respondent and thereafter, the same shall be recovered from the 1st respondent as the rider was not possessing valid driving licence.

5. Being not satisfied with the quantum of the award, the Petitioner/claimant has come forward with the present appeal as appellant.

6. The learned counsel for the appellant/Petitioner contended that the Petitioner having suffered 40% disability, the Tribunal ought to have considered the same and awarded higher amount as compensation. The Tribunal ought to have fixed the disability at 100%. The amount awarded under different heads is very nominal. Due to the injuries suffered, the Petitioner is unable to carry on his milk vending business and

suffered total loss of income. Thus the Petitioner seeks enhancement of the award amount by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent-Insurance company contended that the Petitioner has not suffered any functional disability and considering the age, the Tribunal has awarded a just and fair compensation which needs no enhancement. Thus, the 2nd respondent sought for dismissal of the appeal.

8. Heard both sides and perused the documents available on record.

9. It is only quantum appeal. Both sides have not agitated the issue of negligence.

10. The Petitioner who deposed as P.W.1 clearly stated about the accident which took place on 13.04.2010 by 5.45 p.m. The Police also registered case in Ex.P.1-FIR against the 1st respondent rider only. It is clear from Ex.P.1-FIR that the rider of the 1st respondent vehicle bearing Reg.No.TM-46-J-3947 came at high speed in a rash and negligent manner and dashed against the Petitioner's vehicle causing him multiple grievous injuries. On the other hand, there is no contra evidence let in by the 2nd respondent to disprove the same. As such, the conclusion of the Tribunal that the 1st respondent vehicle driver alone caused the accident is well founded and the same needs no interference.

11. The Petitioner states that he was aged 60 years and was carrying on milk vending and agricultural work, earning Rs.10,000/- per month from the same. It is clear from Ex.P.22-Voter Identity Card that the Petitioner was born in 1946. There is no other document produced by the Petitioner to prove his age. In such circumstances, keeping in mind Ex.P.22-Voter Identity Card as well as other medical records produced by the Petitioner, the Tribunal is justified in fixing the age of the Petitioner at 65 years.

12. The Petitioner states that he suffered fracture in his left leg and due to excessive bleeding, fainted at the occurrence spot. He also stated to have suffered injuries in his head as well as in his hands. After taking first aid in G.H.Athur, he took treatment as inpatient from 13.04.2010 to 23.04.2010 in Ganga Hospital, Coimbatore. P.W.1/Petitioner also

stated that he underwent surgery in the said hospital and he is still unable to walk on his own. Thus P.W.1 states that due to fracture suffered in his left leg, his movement is restricted and he is unable to walk around without a stick. The Petitioner also examined medical expert as P.W.2 and he categorically stated that two bones in the Petitioner's left leg is damaged and he is still feeling pain in the injured left leg. The doctor who deposed as P.W.2 also stated that the broken bones have malunited and the muscles in the left leg are weakened. P.W.2 also stated that the length of the Petitioner's left leg is shortened by 2 cm., and he finds difficulty in sitting down cross legged. According to P.W.2/doctor, the petitioner has suffered 40% disability and he will not be able to do his normal work as before. The disability certificate issued by him is produced as Ex.P.25. The X-ray taken by him is produced as Ex.P.23 and Ex.P.26. It is evident from Ex.P.8-Wound Certificate that the Petitioner suffered grievous injuries. It is also clear from Ex.P.6 Discharge summary that the Petitioner underwent treatment as inpatient and suffered grievous injuries.

13. As stated earlier, P.W.2 has clearly stated that two fractured bones of the left leg of the Petitioner are malunited. Considering the same, the Tribunal has correctly fixed the disability suffered by the Petitioner at 40% on the basis of P.W.2 doctor evidence. In the absence of any contra evidence by any medical expert, the Tribunal is justified in accepting P.W.2 evidence in total. This court finds no infirmity in the same. As such, the disability suffered by the Petitioner is fixed at 40%.

14. As stated above, P.W.2 doctor has stated categorically that the fractured bones are malunited and the petitioner is suffering from permanent partial disability. Taking into account the said fact, this court is of the view that the Petitioner being the milk vendor, the disability will naturally hinder his movements resulting in loss of earning for him. As such, the Petitioner is entitled to compensation at the rate of Rs.3000/- per percentage instead of Rs.2000/- provided for by the Tribunal. The computation for disability is as under:-

$$\text{Rs.3000} \times 40\% = \text{Rs.1,20,000/-}.$$

15. Admittedly the Petitioner has taken treatment continuously as inpatient; thereafter as out patient also. As the length of his left leg is shortened and he has undergone surgery and the bones are malunited, he would have undergone pain and suffering which has to be compensated. The Tribunal has rightly provided for Rs.50,000/- for the same.

16. Considering the nature of avocation of the Petitioner, he is bound to move around on foot or in a two wheeler to carry on his milk vending business. However, considering the nature of injuries suffered, the Petitioner could not have move around for a length of time and as such, it will be appropriate to compensate him for the loss of income during the period of treatment viz., eight months instead of 5 months as done by the Tribunal. The Petitioner claims that he was earning Rs.10,000/- per month. However, there is no proof for the same. Considering the claim of the Petitioner that he was doing milk vending business and agricultural work, it will be appropriate to fix the notional monthly earnings of the Petitioner at Rs.7000/- per month. As such, the loss of income during treatment period is calculated as follows:-

Rs.7000/- x 8 months = Rs.56,000/-.

17. The Petitioner having suffered multiple grievous injuries and undergone treatment for a length of period, he would have needed a nutritious meal for his recovery and in that regard, Rs.20,000/- is provided instead of Rs.10,000/- awarded by the Tribunal.

18. The Tribunal, on the basis of available bills produced as Ex.P.10 and Ex.P.11 series, provided a sum of Rs.42,000/- towards medical expenses. Likewise, the Tribunal awarded amounts under different heads. The same appears to be just and fair compensation and the same needs no interference. Thus, the award passed by the Tribunal is modified as follows:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court. (Rs.)
1.	40% disability	80,000	1,20,000
2.	Pain and suffering	50,000	50,000
3.	Medical expenses	42,000	42,000
4.	Transportation	69,000	69,000
5.	Nutritious meal	10,000	20,000
6.	Attender charges	15,000	15,000
7.	Loss of amenities	30,000	30,000
8.	Damage to clothes	1,000	1,000
9.	Loss of income during the Period of treatment	35,000	56,000
	Total	3,32,000	4,03,000

19. The Tribunal, on the basis of available evidence found that the rider of the 1st respondent vehicle was not having valid licence and the same amounts to violation of policy condition. However, the 2nd respondent has admitted the fact that the 1st respondent vehicle was insured with them as evidenced by Ex.R.1 Policy Copy. The licence of the rider of the 1st respondent is produced as Ex.S.1. It is clear from the same that the licence was issued only on 30.01.2012, while the accident took place on 13.04.2010. The staff of the RTO office who deposed as R.W.1 categorically stated that there was no licence issued to the rider of the 1st respondent vehicle on 13.04.2010, but only on 30.01.2012 for the first time rider Govindaraj was issued with the licence sought for by him. It is therefore clear that there was no valid driving licence for the said Govindaraj on the date of accident. It is further submitted that by permitting the unlicensed person to drive the vehicle, the 1st respondent has committed breach of policy conditions. However, it is admitted by R.W.2 that the 1st respondent vehicle was insured with the 2nd respondent on that day. In such circumstances, the 2nd respondent cannot escape its liability to the third party on the ground of violation of policy condition committed by the 1st respondent vehicle driver. As such, the 2nd respondent/Insurer is bound to pay the compensation to the Petitioner/injured and thereafter, recover the same from the 1st respondent/owner who committed the violation of policy condition. The conclusion of the Tribunal to that effect is perfectly in order and the same is confirmed.

20. In the result,

(i) The Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.4,03,000/- from Rs.3,32,000/-.

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

(iv) The 2nd respondent/Insurance company is directed to deposit the enhanced award amount along with proportionate interest and cost, less the amount already deposited and thereafter, recover the same from the 1st respondent who committed the violation of policy condition.

(v) On such deposit, the appellant/claimant is entitled to withdraw the same by filing necessary application before the Tribunal.

(vi) The Tribunal shall follow appropriate procedure for the disbursal of the award amount. The Appellant shall pay the necessary court fee, if need be.

(vi) No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TO:

1.The Special Subordinate Judge-II,
Motor Accidents Claims Tribunal,
Salem.

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

+1cc to Mr.M.Jothi Kumar, Advocate sr.no.37087

+1cc to Mr.T.Ravichandran, Advocate sr.no.36233

C.M.A.No.1797 of 2014

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