

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1827 of 2014

G.Andrews

...Appellant/Petitioner

vs

1.N.D.Ravichandran

2.National Insurance Company Ltd.,

C-20, AD1, Second Avenue,

Anna Nagar, Chennai-40

...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 12.11.2013 made in M.C.O.P.No.3496 of 2011 on the file of Motor Accident Claims Tribunal, (III Small Causes Court) Chennai.

For appellant : : Mr.K.Varadha Kamraj

for Respondents : : Mr.S.Vadivel & A.Ashok Kumar for R2.

R1 remained exparte in Lower Court

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 12.11.2013 made in M.C.O.P.No.3496 of 2011 on the file of Motor Accident Claims Tribunal, (III Small Causes Court) Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 07.08.2011 at about 12.10 hours, as the petitioner was proceeding in his two wheeler bearing Reg.No.TN-07-BF-8285 in front of Jain college, Thuraipakkam, Chennai, a car bearing Reg.No.TN-01-U-2965 came at great speed, dashed against the two wheeler in which the petitioner was going and caused grievous injuries to the petitioner. The accident occurred only due to rash and negligent driving by the driver of the said car belonging to the first respondent and insured with the 2nd respondent. The petitioner was aged 30 years and by working as a self employed Tailor was earning Rs.500/- per day. Due to the injuries suffered, the petitioner is unable to attend to his work and suffered loss of income. Hence, the petitioner seeks a compensation of Rs.6,00,000/- from the respondents.

3. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent insurance company disputes and denies the involvement of the car bearing Reg.No.TN-01-U-2965 in the accident as alleged by the petitioner. The amount claimed by the petitioner under different heads is very exorbitant. The 2nd respondent also disputes the claim of the petitioner about the driver of the car having valid licence and the offending vehicle being insured with them. Thus, the 2nd respondent 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 and produced documents Ex.P.1 to P.12 to prove his claim. On the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on the basis of the available evidence, found negligence of the 1st respondent car driver alone caused the accident and awarded a sum of Rs.2,83,000/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come up before this court with the present appeal.

5. The learned counsel for the appellant/petitioner contends that the Tribunal went wrong in fixing the monthly income of the injured petitioner only as Rs.7000/-, even though the daily income of the petitioner was Rs.500/- as per oral evidence of P.W.1 and contents of Ex.P.10. The tribunal ought to have awarded some amount towards future loss of income for the injured petitioner. The amount awarded under different heads is very nominal. Hence, the appellant/petitioner sought for enhancement of the award amount fixed by the Tribunal.

6. On the other hand, opposing the appeal, the learned counsel for the 2nd respondent/Insurance Company contends that the accident occurred only due to the negligence of the petitioner himself and as such he is not entitled for any compensation. The 2nd respondent also contends that the Tribunal itself has granted award which is on the higher side and as such, there is no need for any enhancement. Hence, the 2nd respondent sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8.1. The Petitioner states that while he was proceeding in his two wheeler opposite to Jain College, in Thuraipakkam, the car bearing Reg.No.TN-01-U-2965 came at high speed from inside the Jain College and dashed against the vehicle in which the petitioner was proceeding. The oral evidence of P.W.1 was not contradicted by the respondents, who failed to let in any oral or documentary evidence. Further the police have registered Ex.P.1-FIR against the 1st respondent car driver only. It is

also clear from Ex.P.2-Rough Sketch that the accident occurred only in the manner alleged by the petitioner. Further the Police, after investigation laid Ex.P.3 Charge sheet against the driver of the 1st respondent car only. It is therefore clear from the eyewitness account of P.W.1 as well as Ex.P.1-FIR and Ex.P.3 Charge sheet that the accident occurred only due to negligence of the 1st respondent car driver. Hence, the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

8.2. The petitioner further states that he suffered Grade III B Compound fracture both bones in the left leg. According to the petitioner, he took treatment as inpatient in Royapettah hospital from 07.08.2011 to 13.08.2011 and to prove the same, produced Ex.P.5 discharge summary. The copy of the accident register is filed as Ex.P.4. The petitioner also underwent treatment as inpatient in Government Hospital, Royapettah from 26.08.2011 to 23.09.2011 as per Ex.P.6 Discharge summary. Thereafter, the petitioner took treatment in VHS Hospital from 16.11.2011 to 11.12.2011 and the same is based on Ex.P.7 discharge summary. Thus, the petitioner underwent treatment as inpatient for a considerable period of time. He also took multiple drill holes treatment and suffered permanent disability. The petitioner examined P.W.2 doctor, who assessed the disability and stated that the petitioner is having pain and swelling in the left leg and he walks with difficulty and limp and is unable to do any work using his left lower leg. P.W.2 assessed disability at 60% after physically examining the petitioner. P.W.2 also produced X-ray which is marked as Ex.P.11. The Tribunal accepted the same, fixed disability at 60% and awarded at the rate of Rs.2000/- per percentage. The petitioner contends that due to disability suffered by him, he is unable to carry on his work as tailor which requires usage of legs and hands. It is apparent that the nature of injuries suffered by the petitioner will prevent him from working as Tailor. As such, the petitioner is entitled for permanent disability compensation. Considering the nature of injury, it will be appropriate to award Rs.3000/- per percentage and as such, for the permanent disability, this court is inclined to award compensation as follows:-

$60 \% \times 3000 = \text{Rs.}1,80,000/-$.

Thus, a sum of Rs.1,80,000/- is awarded under the head "Permanent disability". Considering the nature of injury and the period of treatment as inpatient undergone by the petitioner and the other attendant circumstances, this court is inclined to modify the amount awarded by the Tribunal as follows:-

Sl .N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of income	Rs. 42,000/-	Rs. 42,000/-
2.	Transport to Hospital	Rs. 10,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 7,000/-	Rs. 12,000/-
4.	Damage to clothing	Rs. 1,000/-	Rs. 1,000/-
5.	Medical expenses	Rs. 65,000/-	Rs. 65,000/-
6.	Attender charges	Rs. 5,000/-	Rs. 15,000/-
7.	Loss of amenities of life	Rs. 3,000/-	Rs. 30,000/-
8.	Pain and suffering	Rs. 30,000/-	Rs. 50,000/-
9.	Permanent disability	Rs. 1,20,000/-	Rs.1,80,000/-
	Total	Rs.2,83,000/-	Rs.4,05,000/-

9. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed.
The award amount is enhanced to Rs.4,05,000/- from Rs.2,83,000/-;

(ii)The Appellant/Claimant is entitled to a sum of Rs.4,05,000/- (Rupees Four lakhs five thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate cost;

(iii)The second respondent-Insurance company is directed to deposit the award amount before the Tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal shall pass appropriate orders on application filed by the Appellant for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accident Claims Tribunal,
(III Small Causes Court) Chennai.

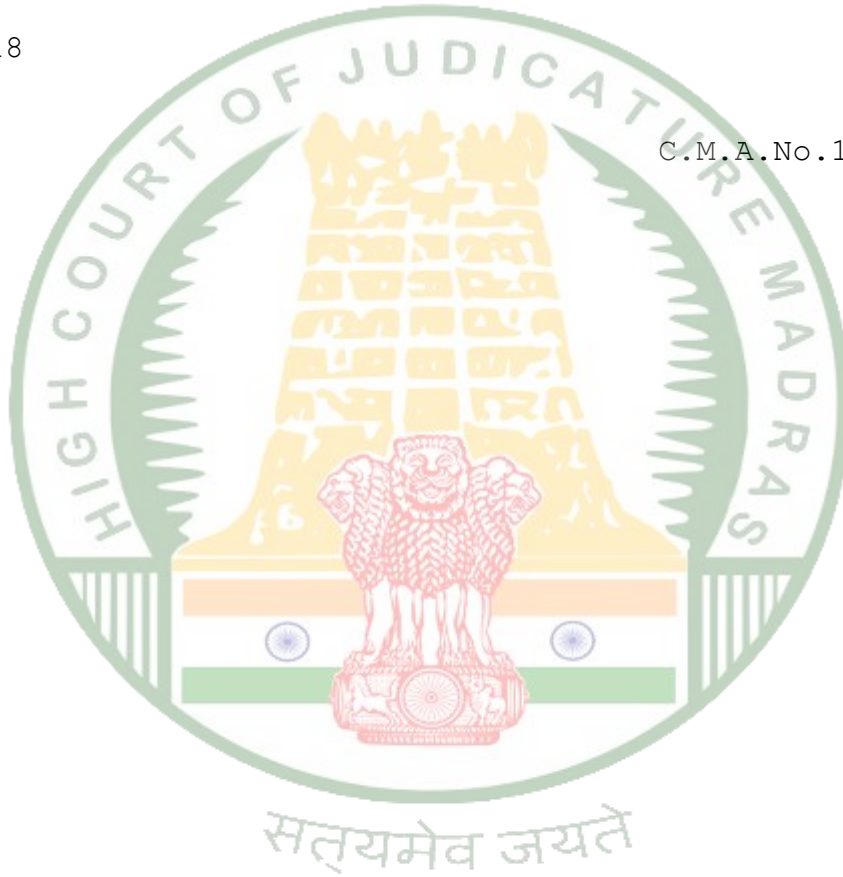
2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to M/s.K.Varadhakamaraj, Advocate Sr.No.20757

+lcc to M/s.S.Vadivel, Advocate Sr.No.20651

RSK(CO)
sm:3.5.2018

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