

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.334 of 2018

A.Arokiyasamy

..Appellant/Respondents

Vs

1. Dhanasekaran

2. M/s.Iffco Tokio General Insurance Co.Ltd.,
Iffco Bhavan
No.123, Habibullah Road
T.Nagar, Chennai-600 017

..Respondents/Petitioners

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Award and Decree dated 05.12.2016 passed by the Motor Accident Claims Tribunal, III Small Causes Court, Chennai in MCOP.No.6275 of 2013

For Appellant :: Mr.K.Varadha Kamaraj

For respondents :: Mr.C.R.Krishnamoorthy for R2.
R1-Set Exparte before Tribunal.

JUDGMENT

By consent of both sides counsel, this Civil Miscellaneous Appeal filed by the appellant/claimant is taken up for final disposal at the admission stage itself. The appellant challenges the Award and Decree dated 05.12.2016 passed by the 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. It is a case of injury. The case of the petitioner is that on 07.07.2013 at about 21.30 hours, while the petitioner was crossing ECR Road, near VGP, the 1st respondent Bike bearing Reg.No.TN-31-AC-2211 came at high speed in the North South direction, dashed against the petitioner, causing him multiple grievous injuries. The accident occurred only due to rash and negligent driving by the 1st respondent vehicle rider. The said vehicle was insured with

the 2nd respondent. The petitioner who was aged 25 years was employed as a Painter, earning Rs.500/- per day. Due to the injury suffered by him, he is unable to attend to his work and the petitioner suffered due to loss of earning. Thus, the petitioner sought for a sum of Rs.11,00,000/- as compensation from the respondents, who are the owner and insurer of the bike bearing Reg.No.TN-31-AC-2211.

3. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. The driver of the two wheeler did not possess valid driving licence. The Petitioner's claim about his age, nature of injury, avocation and income is denied. The accident occurred only due to negligence of the petitioner. The amount claimed by the petitioner is highly excessive. Thus the 2nd respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioner examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.7 to prove his claim. While the 1st respondent remained exparte, on behalf of the contesting 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal after analysing the documents on record, found negligence of the 1st respondent driver alone caused the accident and passed an award for a sum of Rs.1,82,500/-, payable by the 2nd respondent.

5. Being not satisfied with the quantum, the appellant/petitioner/claimant has come forward with the present appeal.

6. The learned counsel for the Appellant/Petitioner contends that inspite of the doctor evidence, the tribunal reduced the percentage of disability suffered by the petitioner to 30% instead of 45% given by P.W.2 doctor. The amount awarded under different heads is very nominal. Thus, the appellant/Petitioner sought for enhancement of the quantum of the award by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/insurance company contends that negligence of the petitioner alone caused the accident and as such, the petitioner is not entitled for any compensation. The award passed by the tribunal itself is highly excessive. Thus, the 2nd respondent/insurance company sought for dismissal of the appeal.

8. The petitioner who was injured in the accident deposed as P.W.1 and stated that while crossing the ECR road, the 1st respondent vehicle bearing Reg.No.TN-31-AC-2211 came at high speed, dashed against him, causing multiple injuries. The Police also registered Ex.P.1-FIR against the rider of the 1st respondent vehicle only. The 1st respondent has not chosen to let in any contra evidence to disprove the claim of the Petitioner. In such circumstances, the Tribunal on the basis of P.W.1 evidence as well as Ex.P.1-FIR correctly concluded that the negligence of the 1st respondent vehicle driver alone caused the accident. No contention is raised before this court to interfere with the same. Thus, the conclusion of the Tribunal that negligence of the 1st respondent driver alone caused the accident is confirmed.

9.1. P.W.1 stated that he suffered grievous injuries. It is evident from Ex.P.3-Discharge summary issued by the Rajiv Gandhi Government Hospital, Chennai, that the Petitioner was admitted on 07.07.2013 for treatment and discharged on 15.07.2013. Ex.P.4-X ray and Ex.P.7-Scan Report also makes it clear that the injuries sustained by the Petitioner is grievous in nature.

9.2. The doctor who deposed as P.W.2 stated that he examined the Petitioner on 23.01.2016 and after considering Ex.P.7-Scan Report as well as Ex.P.4 and Ex.P.5 - X ray, fixed the disability suffered by the Petitioner at 45%. Further, P.W.2 doctor also issued Ex.P.6-Disability certificate. It is clear from the same that the Petitioner suffered Partial permanent disability. There is no contra evidence let in by the respondent to disprove the Petitioner's claim.

9.3. The learned counsel for the Appellant/Petitioner contends that in the absence of any contra medical evidence, the Tribunal ought to have accepted P.W.2 assessment in full. The said contention is disputed by the 2nd respondent/Insurance company.

9.4. Considering the rival contentions and the nature of injury suffered by the Petitioner and the evidence of P.W.2/doctor, it will be appropriate to fix the disability suffered by the Petitioner at 40% instead of 30% fixed by the Tribunal. Further it will be appropriate to compensate at the rate of Rs.3000/- per percentage. Thus, the disability compensation is calculated as under:-

Rs.3000/- x 40% = Rs.1,20,000/-.

10. The Tribunal has awarded Rs.2000/- towards Attender charges. Considering the nature of injury suffered by the Petitioner and the consequential disability, it will be

appropriate to provide Rs.5000/- towards Attender charges. While, the Tribunal provided Rs.40,000/- towards Pain and suffering and Rs.10,000/- towards Damages for mental and physical shock, this court is inclined to modify the same as Rs.50,000/- towards Pain and suffering. Taking into consideration the nature of avocation of the Petitioner ie., Painter and that he suffered grievous head injury and loss of other comforts, towards "loss of amenities", a sum of Rs.15,000/- is provided by this court. Except the above, there is no serious challenge to the quantum of the award passed by the Tribunal under other heads. Further the same appears to be very fair and reasonable. As such, the amount provided under other heads needs no interference. Hence, 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.	Loss of income	24,500	24500
2.	Attender charges	2,000	5,000
3.	Transport to Hospital	5,000	5,000
4.	Extra nourishment	10,000	10000
5.	Damage to clothing	1,000	1,000
6.	Pain and suffering	40,000	50,000
7.	Damages for mental and physical shock	10,000	---
8.	Disability	90,000	1,20,000
9.	Loss of amenities	--	15,000
	Total	1,82,500	2,30,500/-

11. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.2,30,500/- from Rs.1,82,500/-.

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

(iv) The second respondent/Insurance company is directed to deposit the enhanced award together with interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v) The Appellant/Claimant is entitled to withdraw the award

amount along with accrued interest, except for the delay period of 177 days in filing the appeal [Vide order dated 12.02.2018 in CMP.No.19528/2017 in CMA.SR.87895/2017]

(vi) The Tribunal shall pass necessary orders for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To

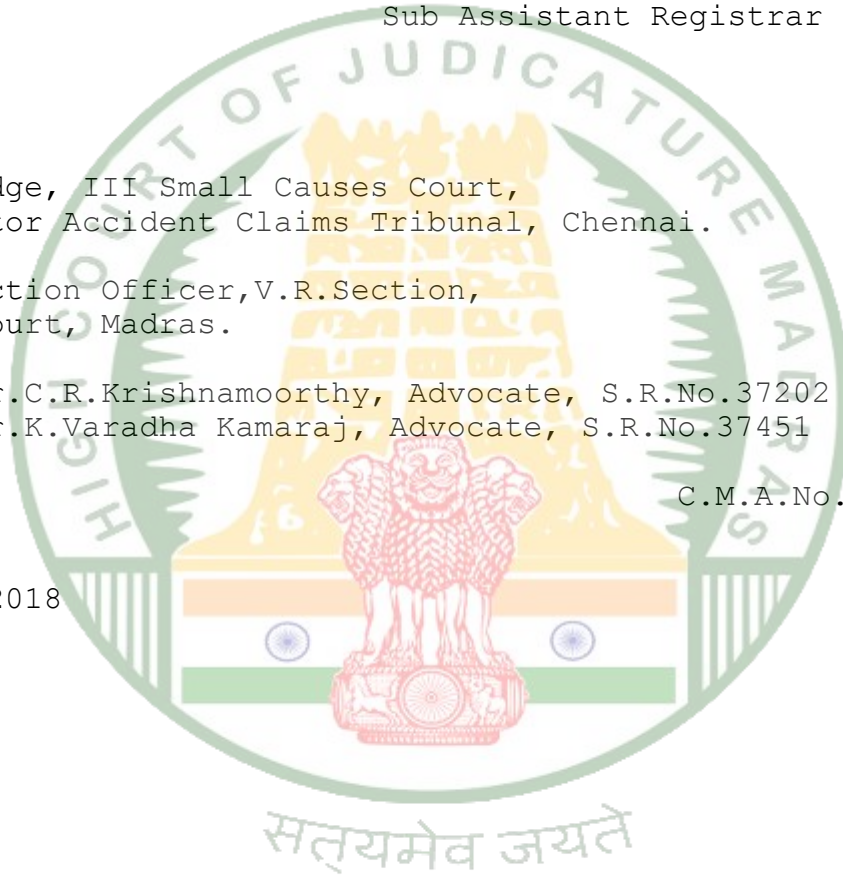
1. The Judge, III Small Causes Court,
The Motor Accident Claims Tribunal, Chennai.
2. The Section Officer,V.R.Section,
High Court, Madras.

+lcc to Mr.C.R.Krishnamoorthy, Advocate, S.R.No.37202

+lcc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.37451

C.M.A.No.334 of 2018

RJ(CO)
CS/25/10/2018



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