

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2053 of 2017

G.Raghuramaiah

...Appellant/Petitioner

vs

1.M.Kalyana Kumar

2.The ICICI Lombard General Insurance

Co.Ltd., No.84/85, Walltax Road, 1<sup>st</sup> floor

Arihant Plaza, Chennai-600 003 ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 27.03.2013 made in M.C.O.P.No.761 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional District and Sessions Judge, at Chennai.

For appellant : : Mr.T.G.Ravichandran

for Respondents

for R2 : : Ms.R.Sree Vidhya.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 27.03.2013 made in M.C.O.P.No.761 of 2010 on the file of Motor Accident Claims Tribunal, XVII Additional Court, at 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 when he was walking in Muthusami Salai corner from North to South at 17.30 hours, on 01.01.2010, a motor cycle bearing Reg.No.TN 07 AR 3632 owned by the 1st respondent and insured with the 2nd respondent came at high speed driven in a rash and negligent manner from South to North, dashed against the petitioner resulting in the petitioner sustaining grievous injuries. According to the petitioner, the negligence of the rider of the above motor cycle alone is responsible for the accident. It is further averred in the Petition that at the time of accident, the Petitioner was aged 58 years and he was earning Rs.16,500/- per month. Due to the grievous injuries suffered by the Petitioner, he suffered loss of income and was unable to attend to his regular work. Hence,

the Petitioner seeks a sum of Rs.5,50,000/- as compensation from the respondents who are the owner and insurer of the vehicle, involved in the accident.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent Insurance Company contends that it is not correct to say that negligence on the part of rider of the Motor cycle caused the accident but the negligence of the Petitioner alone is the cause for the accident. The nature of injuries, age, occupation and income of the Petitioner is denied. The claim of the Petitioner is excessive. Hence, the respondent seeks dismissal of the Petition.

4. Before the Tribunal, the petitioner examined himself as P.W.1 and medical expert as P.W.2 and produced Ex.P.1 to P.12 to prove his claim. On the side of the 2nd respondent, neither oral nor documentary evidence was produced. The Tribunal on the basis of available material on record found that the first respondent driver is the sole reason for the accident and held that the petitioner having suffered permanent disability of 40% is entitled for total compensation of 2,15,000/-. Being not satisfied with the quantum of the award, the Petitioner has come forward with the Present Appeal.

5. Heard the learned counsel appearing for either side and perused the materials available on record.

6. The learned counsel for the Petitioner contends that the Tribunal fixed the disability of the injured at 40% instead of 55% without any basis. The monthly income of the Petitioner was also wrongly fixed as 4500/- without considering Ex.P.9 Income Tax Return Verification form and Ex.P.8 Pan card. The loss of earning ought to have been given for 12 months, but the Tribunal calculated for 4 months only. The fact that the Petitioner was a Painter and working with M/s.Sree Vijaya and Co., and earned Rs.16,500/- per month was not taken into account by the Tribunal. The reason stated by the Tribunal for negating the claim for loss of amenities and the claim under other heads is not proper. Hence, the Petitioner seeks to enhance the award amount to Rs.5,50,000/- by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the claim of the Petitioner is not substantiated and the Award passed by the Tribunal itself is on the higher side and as such, the claim of the Petitioner for further enhancement is unwarranted and appeal is to be dismissed for want of merits.

8. The Petitioner claims that while he was walking along the Muthusamy Salai Corner from North to South, a two wheeler bearing Reg.No.TN 07 AR 2882 came from opposite direction at

high speed and dashed against him. The Petitioner also produced Ex.P.1-FIR, registered by the Police against the rider of the 1st respondent Motor cycle and also Ex.P.3 charge sheet filed against the same person, after investigation by the Police. It is therefore, clear that the rider of the Motor Cycle was held responsible by the Police for the accident as evidenced by Ex.P.1 FIR and Ex.P.3 Charge sheet. It is evident from Ex.P.2 Rough Sketch that the occurrence took place in the manner stated by the Petitioner herein. A combined reading of the oral evidence of P.W.1 and documentary evidence of Ex.P.1 to Ex.P.3 clearly substantiate the claim that the negligence of the 1st respondent driver alone caused the accident. Even though the 2<sup>nd</sup> respondent disputed the claim of the Petitioner in that regard, no contra evidence was let in by the 2nd respondent to disprove the claim of the Petitioner. As such, in the light of the above said discussion, it is clear that the negligence of the 1st respondent driver alone caused the accident. The finding of the Tribunal to that effect is just and proper.

9. The petitioner stated that he was 58 years old and earning monthly income of Rs.16,500/= as partner of M/s.Sree Vijaya and Co.,. The Petitioner has not produced documents regarding his age. However, as per Ex.P.4-Accident Register Copy and Ex.P.5-O.P.Chit, it is clear that the age of the Petitioner was 58 years at the time of the accident. The Petitioner claims that he was getting salary of Rs.16,500/= per month as partner of M/s.Sree Vijaya and Co., and to prove the same, the petitioner produced Ex.P.9 Xerox copies of Income Tax Return for the year 2009-10 and Ex.P.10-copy of Pan Card. However, the Tribunal disbelieved Ex.P.9 document, as the same is not an authenticated one, but only a xerox copy. Hence, the Tribunal fixed the monthly income of the petitioner at Rs.4,500/-. However, considering the nature of business carried on by the Petitioner and attendant circumstances, it will be appropriate to fix his monthly income at Rs.6,500/-.

10. It is evident from the deposition of P.W.1 that he suffered fracture in his right leg and dislocation of right shoulder apart from the injury all over the body. He further deposed that he took first aid at Government General Hospital, Chennai, and took treatment as inpatient at M.N.Orthopedic Hospital, Chennai, from 01.01.2010 to 04.01.2010. The petitioner produced the Accident Register copy of the Government Hospital, Chennai, as Ex.P.4 and O.P.Chit as Ex.P.5. The petitioner also produced Accident Register copy issued by the Private Hospital as Ex.P.6, wherein, it is clearly stated that bones in the right leg is fractured and right shoulder is dislocated. The Petitioner also underwent surgery on 02.01.2010 and the discharge summary issued in this regard is Ex.P.7. The doctor who deposed as P.W.2 stated that he examined the Petitioner on 12.08.2012 and as per his assessment, the



disability suffered by the Petitioner is 55%. According to P.W.2, there was malunion of tibia and fibula bones. It is stated by the petitioner that he finds it difficult to sit properly and to climb staircase. In such circumstances, considering the overall evidence available on record, the disability was fixed at 40%. It is seen that no calculation sheet was annexed with Ex.P.12-disability certificate. Hence, the finding of the tribunal that the petitioner could have suffered only 40% disability, appears to be just and proper. However, the compensation fixed for the disability at Rs.2000/- per percentage is modified and it is appropriate to award Rs.3000/- per percentage of 40% disability and the compensation for the permanent disability is calculated as under:-

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

Further, considering the disability and the fracture, dislocation of right shoulder, malunion of bones etc., it will be appropriate to award Rs.50,000/- under the head "Pain and suffering" instead of Rs.20,000/- awarded by the Tribunal. Taking into consideration the fact that the petitioner could not have attended to his regular work for atleast 6 months, the loss of income during the period of treatment is worked out as under:-

Rs.6500/- x 6 months = Rs.39,000/-

Thus, a sum of Rs.39,000/- is awarded under the head "loss of income during the period of treatment". Further, keeping in view that the petitioner would have been in need of an attender during the period of treatment, this court is inclined to award Rs.15,000/- under the head "Attender charges". This court is also inclined to award Rs.15,000/- under the head "Extra Nourishment". For the medical bills produced, the award of Rs.64,000/- given by the Tribunal, is just and proper and the same is confirmed. Since the petitioner has given an estimation of future medical expenses with supporting document in Ex.P.11, a sum of Rs.30,000/- is awarded by the Tribunal, under the head "Future Medical expenses", which in my considered opinion, is just and proper and hence, the same is confirmed. Thus, the modified compensation granted by this Court under various heads is as follows:-

|                                        |                  |
|----------------------------------------|------------------|
| Permanent Disability                   | = Rs.1,20,000/-  |
| Pain and Suffering                     | = Rs. 50,000/-   |
| Loss of income during treatment period | = Rs. 39,000/-   |
| Attender charges                       | = Rs. 15,000/-   |
| Extra Nourishment                      | = Rs. 15,000/-   |
| Medical Bills                          | = Rs. 64,000/-   |
| Future Medical expenses                | = Rs. 30,000/-   |
|                                        | -----            |
| Total                                  | = Rs.3,33,000/-. |

11. Accordingly, the compensation awarded by the Tribunal stands enhanced to Rs.3,33,000/- by this court. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs as follows:-

- (i) The award of the Tribunal is enhanced to Rs.3,33,000/- from Rs.2,15,000/-;
- (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 2nd respondent/Insurance Company is directed to deposit the award amount with proportionate interest and costs, less the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order;
- (iv) On such deposit, the appellant/petitioner/claimant is permitted to withdraw the amount awarded as above, by filing proper application before the Tribunal, less the amount if any already withdrawn, with accrued interest. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application;
- (v) In view of the order of this court dated 22.06.2017 passed in M.P.No.1 of 2015 in CMA(SR).No.106941 of 2014 and since the appeal has been filed with the delay of 436 days, interest is waived off, for the default period.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,  
XVII Additional District and Sessions Judge, at Chennai.

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

+1cc to Mr.T.G.Ravichandran, Advocate sr.no.9253

+1cc to M/s.R.Sreevidhya, Advocate sr.no.14193

C.M.A.No.2053 of 2017

kj(co)

nr 06/06/2018