

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.337 of 2018

Sivakumar

..Appellant/Petitioner

Vs

1.N.Ammasai

2.The Chairman, Excel Engineering College
N.H.47, Salem Main Road
Pallakkapalayam Post, Kumarapalayam Via
Tiruchengode Taluk, Namakkal District

3. ICICI Lombard General Insurance Co.Ltd.,
Rep. by its Manager, Cowley Prown Road
R.S.Puram, Coimbatore -2. ...Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 30.08.2013 made in M.C.O.P.No.355 of 2011 on the file of Motor Accident Claims Tribunal, Subordinate Court, Bhavani, Erode District.

For appellant : :Mr.C.Kulanthaivel

for Respondents : : Ms.R.Sree Vidhya for R3

Notice to R1 and R2 dispensed with.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the decree and judgment dated 30.08.2013 made in M.C.O.P.No.355 of 2011 on the file of Motor Accident Claims Tribunal, Subordinate Court, Bhavani, Erode District.

2. For the sake of convenience, the parties are referred to herein as per the litigative status before the Tribunal. The case of the petitioner is that on 19.07.2011 at about 4.45 p.m., while the petitioner was going in a Tractor bearing Reg.No.TD-Q-1662 in the Salem to Kovai NH 47 Road, near Kullankadu, a college bus bearing Reg.No.TN-34-L-0416 driven by the 1st respondent came at high speed, dashed against the Tractor, in which the petitioner was sitting, resulting in grievous injuries to him. The negligence of the driver of the 2nd respondent College bus, who is the 1st respondent, is the sole cause for

the accident. It is stated in the claim petition that the petitioner was aged 32 years and by working as a cooly, was earning Rs.10,000/- per month. Due to the injuries suffered by him, he is unable to carry on his work and for the injuries caused to him, the petitioner sought compensation of Rs.5,00,000/- from the respondents 2 and 3 who are the owner and insurer of the offending vehicle.

3.1. On the other hand, opposing the petition, by filing counter, the 2nd respondent/owner of the vehicle contends that the accident did not occur as alleged by the petitioner. The 1st respondent, who was driving the bus possessed valid driving licence. The said bus was insured with the 3rd respondent. The Tractor Trailer in which the petitioner was proceeding came at high speed and dashed against the bus. Since the Tractor/Trailer was used for carrying sand without any proper permit, the petitioner is not entitled to seek compensation. The claim of the petitioner is exorbitant. Thus, the 2nd respondent sought for dismissal of the petition.

3.2. Likewise, the 3rd respondent/Insurance company, opposing the petition, filed counter stating that the 2nd respondent is the owner of the bus bearing Reg.No.TN-34-L-0416. On the occurrence day, the bus was driven by the 1st respondent/driver, who possessed valid driving licence. It was only the negligence of the Tractor driver that caused the accident and not the negligence of the bus driver. The age, avocation and income of the petitioner stated in the petition is denied. The accident occurred due to the negligence of the Tractor driver also. Hence, the owner of the Tractor is also liable to pay compensation. Hence, the 3rd respondent sought for dismissal of the petition before the Tribunal.

4. Before the Tribunal, along with M.C.O.P.No.355 of 2011 filed by the petitioner, another connected MCOP.No.369 of 2011 was taken up for joint trial. The petitioner in MCOP.No.355 of 2011/appellant herein, examined P.Ws.1 to 3 and produced documents Ex.P.1 to P.17 to prove their claim. On the side of the 3rd respondent/Insurance company, neither oral nor documentary evidence was let in. On the basis of available evidence, the Tribunal fixed negligence on the part of the 1st respondent driver whose rash and negligent driving only caused the accident and awarded a sum of Rs.1,00,000/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

5. The learned counsel for the appellant/petitioner contends that the Tribunal failed to appreciate the permanent disability suffered by the petitioner properly. The petitioner took treatment as inpatient for 33 days and suffered permanent

disability as evidenced by Ex.P.13-Disability certificate and the Tribunal wrongly fixed the disability at 25%.The avocation and income of the petitioner was not taken into consideration by the Tribunal properly. The amount awarded under different heads is too meagre. Hence, the petitioner seeks enhancement of the Quantum of the award by allowing the appeal.

6. Per contra, the learned counsel for the 3rd respondent/Insurance company contends that the nature of injury suffered by the petitioner does not prohibit him from carrying on his avocation and there is no functional disability and there is no need to enhance the quantum of award passed by the Tribunal. The driver of the Tractor also contributed to the accident and as such, fixing the negligence in full on the 1st respondent bus driver is not proper. There is no need to enhance the quantum of the award passed by the Tribunal. Hence, the 2nd and 3rd respondents sought for dismissal of the appeal.

7. Heard both sides and perused the records carefully.

8. The petitioner who deposed as P.W.1 stated that while he was going in the tractor in Salem to Coimbatore NH 47 on the left side of the road near Kullankadu, the 2nd respondent bus driven by the 1st respondent came at high speed, dashed against the tractor, resulting in the accident. The Police also registered the case against the 1st respondent only as evidenced by Ex.P.1-FIR. After completing the investigation, the Police also laid the charge sheet against the 1st respondent as evidenced by Ex.P.6, copy of the charge sheet. It is therefore clear from the oral evidence of P.W.1 as well as Ex.P.1-FIR and Ex.P.6 Charge sheet, that the 1st respondent negligence alone caused the accident.

9. On the other hand, the 2nd and 3rd respondents did not let in the oral evidence of the driver of the offending vehicle viz., the 1st respondent nor any other person to disprove the version and statement of P.W.1. Further Ex.P.2 Observation Mahazar and Ex.P.3 Rough Sketch filed on the side of the Petitioner clearly substantiate the claim of the Petitioner about the manner in which the accident took place. It is also clear from Ex.P.4 Motor Vehicle Inspectors Report that there is no mechanical defect involved in the accident. As such on the basis of P.W.1 evidence and also documents Ex.P.1 to Ex.P.4 and Ex.P.6, it is clear that negligence of the 1st respondent alone caused the accident.

10. The petitioner states that he suffered fracture over the left leg fibula and tibia, abrasion over both hands, contusion over the head. Immediately he was given first aid in Government Hospital at Komarapalayam and thereafter took treatment in LKM

Hospital at Erode as inpatient. Ex.P.5 is the copy of Accident Register. It is evident from the same that the 1st injury stated therein, is grievous injury and the other injuries are simple in nature. Ex.P.8-Discharge summary makes it clear that the petitioner took treatment as inpatient for two different periods in LKM Hospital. The petitioner states that previously he was working as cooly and earning Rs.10,000/- per month and after the accident, due to the injury suffered by him, he finds it difficult to carry any luggage and he is also suffering from headache and giddiness very frequently. The doctor who deposed as P.W.3 clearly stated that he examined the petitioner personally and also took X-ray to assess the disability suffered by the petitioner. According to P.W.3/ doctor, the petitioner suffered 36% disability and the certificate issued by him is Ex.P.13. Considering the nature of injury stated by the petitioner as well as the evidence of P.W.3 doctor, it is apparent that the bones in the left leg are affected and he finds it difficult in climbing stairs and unable to kneel down or sit in the ground. Thus P.W.3 doctor assessed the disability at 36%. However, the Tribunal fixed the disability of the petitioner at 25%. The learned counsel for the appellant/petitioner contends that in the absence of any contra evidence, the Tribunal is not justified in reducing the disability fixed by doctor. In support of the same, he relied upon the Ruling reported in 2017 (1) TNMAC 251, [P.Elangovan Vs. S.Murali and others] wherein, it is held as follows:-

"P.W.2 doctor determined the disability at 35%. However, the Tribunal without any contra evidence reduced the same to 30% and awarded a sum of Rs.90,000/- towards disability. The said reduction is unwarranted in the absence of any contra-evidence of Experts and hence, this court redetermines the disability at 35% and awards a sum of Rs.1,05,000/- towards disability."

The learned counsel for the Appellant/Petitioner also relied upon another decision reported in 2013(2)TN MAC 669, [M.Thirunavukkarasu Vs. P.T.S.M.Dhasthagir and 2.National Insurance Company Ltd.,], wherein, it is held as follows:-

"14. Merely because the disability certificate has been issued after three years from the date of accident, it cannot be concluded that the assessment made by the doctor as excessive. Considering the nature of injuries, the surgeries underwent by the appellant, this court is of the view that the reason assigned for reducing the percentage of partial and permanent disablement, cannot be accepted and therefore, this court deems it fit to restore the extent of disablement assessed by P.W.3 doctor to

40% and following the decision in M.D. TNSTC Ltd., S.Kannappan, 2007 (2) TNMAC 1 ; and Prahalath Jasmathiya Vs. V.Sankaran, 2009 (5) MLJ 1549 (Mad-NOC) awarded a sum of Rs.80,000/- (Rs.2000/- per percentage of disability.)"

Following the above said Ruling, it is clear that there is no valid reason for the Tribunal to reduce the permanent disability fixed by the doctor at 36% to 25%. This court is of the view that the evidence of P.W.3/ doctor regarding disability assessed, is not contradicted by any material by the 3rd respondent/Insurance company. Therefore, The Tribunal is not justified in reducing the disability suffered by the petitioner as 25% instead of 36% fixed by P.W.3 doctor. Hence the disability suffered by the petitioner is taken as 36% on the basis of P.W.3 evidence. As the accident occurred in 2011 and the petitioner is suffering due to the said disability continuously, it will be appropriate to fix rs.3000/- per percentage of disability instead of Rs.2000/- fixed by the Tribunal. Accordingly, the award is modified by this court under the head "Partial Permanent Disability" as under:-

Rs.3000/- x 36% = 1,08,000/-.

Even though the petitioner claimed Rs.10,000/- as his monthly income, considering the avocation of the petitioner, a sum of Rs.5000/- is fixed as his monthly income. Further for the injuries suffered and the treatment taken for the same, this court is of view that he would not have attended to his work for atleast four months. Hence, he would have suffered loss of income. Therefore, for the loss of income during the period of treatment, it will be appropriate to calculate the compensation as follows:- Rs.5000/- x 4 months= Rs.20,000/-. Thus the modified compensation is as shown below:-

Head	Award granted by the Tribunal	Award granted by this Court
Permanent disability	50,000/-	1,08,000/-
Medical expenses	30,000/-	30,000/-
Pain and suffering	8,000/-	15,000/-
Extra nourishment	6,000/-	10,000/-
Transport expenses	3,000/-	5,000/-
Attender charges	3,000/-	5,000/-
Loss of amenities and discomfort	---	10,000/-
Loss of income during the period of treatment	---	---
20,000/-	---	---
Total	1,00,000/-	2,03,000/-.

In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed;
- (ii) The appellant/claimant is entitled to award amount of Rs.2,03,000/- which carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation;
- (iii) The 3rd respondent/Insurance company is directed to deposit the award amount within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/petitioner is permitted to withdraw the same, by filing necessary application before the Tribunal. In view of the order of this court passed in CMP.No.15299 of 2017 in CMA.SR.No.68231 of 2017, the appellant shall forego interest for the delay period. No costs.

Sd/--

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To.

1. The Motor Accident Claims tribunal,
Subordinate Court, Bhavani, Erode District.

+lcc to Mr.C.Kulanthaivelu, Advocate Sr.No.22812

SSD(CO)

sm:29.6.2018

C.M.A.No.337 of 2018

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