

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.948 of 2011

G.Rajadurai

..Appellant/Claimant

vs

1.S.Murugan

2.United India Insurance Co.Ltd.,

T.K.M.Complex

Rep. By its Divisional Manager

Katpadi Road, Vellore-4

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 09.09.2008 made in M.C.O.P.No.307 of 2005 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore District, Vellore.

For appellant : : Mr.R.Nalliyappan

For Respondent(s) : : R1-Set Exparte before the Tribunal
Mr.S.Arun Kumar for R2

J U D G M E N T

The Appellant is the Petitioner/injured claimant. He has filed this appeal, challenging the order and decree dated 09.09.2008 made in M.C.O.P.No.307 of 2005 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate, Vellore District, Vellore.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. It is a case of injury. The case of the Petitioner is that on 03.07.2005 at about 10 a.m., while the Petitioner was returning home from Sathumadurai to Hosur in his cycle, the 1st respondent came in his motor cycle bearing Reg.No.TN-22-AF-3763 at high speed, in a rash and negligent manner, dashed on the bicycle of the Petitioner, causing him multiple grievous injuries. The Petitioner suffered injuries in his right knee, left hand and he took treatment in Government Hospital as

inpatient for some period of time. The accident occurred due to negligence of the 1st respondent only. The Petitioner was working as vegetable vendor, earning Rs.4000/- per month. Due to injury, he is not in a position to carry on his vegetable vending business and hence, sought for a sum of Rs.5,30,000/- from the respondents, who are the owner and insurer of the offending vehicle.

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 as alleged by the Petitioner. The age, occupation and income as claimed by the Petitioner is disputed. The negligence on the part of the Petitioner alone is the cause for the accident. On the occurrence day, the Petitioner crossed the road in his bicycle without noticing the oncoming 1st respondent motor cycle. It was only due to negligent crossing of the road by the Petitioner, the accident occurred. As per intimation letter from the Vellore Medical College Hospital Police Out Post to the Police Station, the rider of the two wheeler is stated to be one Elumalai, but in the FIR, the same was not mentioned. In the charge sheet, the rider is stated to be one Murugan. This will create doubt as to whether the two wheeler bearing Reg.No.TN-22-AF-3763 is involved in the accident or not. The rider of the two wheeler one Elumalai did not possess valid driving licence. Hence, the 2nd respondent/Insurer of the Lorry owned by the 1st 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.8 to prove his claim. 1st respondent remained exparte. On the side of the 2nd respondent, neither oral nor documentary evidence was let in.

5. After analyzing the evidence on record, the Tribunal found that the negligence of the 1st respondent vehicle rider alone caused the accident, passed an award for a sum of Rs.56,000/- payable by the respondents.

6. Being not satisfied with the said award of the Tribunal, the injured claimant/appellant has come forward with this appeal.

7. The learned counsel for the appellant/claimant contends that the Tribunal failed to appreciate the evidence on record properly and passed the award granting lesser sum as compensation. The amount provided by the Tribunal under different heads is very nominal. The Tribunal failed to provide

sufficient sum for the permanent disability. Thus the Petitioner/appellant sought for enhancement of the award amount by entertaining the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the accident occurred due to negligence of the Petitioner/appellant who crossed the road without noticing the on coming vehicle, resulted in the accident and and therefore, he contributed to the accident. The Petitioner does not suffer any functional disability. As such, the claim of the Petitioner/appellant is exorbitant. There is no need to enhance the compensation and therefore, the 2nd respondent/Insurance company sought for dismissal of the appeal.

9. It is only quantum appeal. Neither side contested the matter on the issue of negligence. As such, the conclusion of the Tribunal on the basis of the oral evidence of the Petitioner as P.W.1 and the contents of Ex.P.1-FIR that the negligence of the 1st respondent two wheeler driver alone caused the accident is just and proper and the same needs no interference.

10. The Petitioner stated that he suffered fracture in his left leg and right hand wrist and injuries all over the body. The Wound Certificate issued to him is produced as Ex.P.2. The Petitioner further stated that due to fracture suffered by him, he is not able to carry on vegetable vending business. According to the Petitioner, the injuries has caused permanent disability to him.

11. To prove the same, the Petitioner, examined PW.2/doctor and the said doctor after examining the Petitioner and on perusal of Ex.P.8-X ray, concluded that the Petitioner suffered 40% disability. The certificate issued to that effect by P.W.2 is produced as Ex.P.7. According to the Medical expert, there is malunion of fractured bones. The Petitioner will find difficulty in chewing hard substance. As per P.W.2's evidence, the Petitioner will find difficulty in opening his mouth fully and cannot raise his voice which is essential for the vegetable vendor to sell his products.

12. There is no contra evidence let in by the respondents. As such, the evidence of P.W.2 Doctor alone is available. However, P.W.2 has not treated the Petitioner. Further P.W.2 has not attached any calculation sheet with Ex.P.7 disability certificate. In such circumstances, it will be appropriate to

fix the disability suffered by the Petitioner at 30%. There is no evidence to show that the Petitioner is suffering from any functional disability. Hence, there is no need to adopt multiplier method for the 30% disability suffered by the Petitioner. As such, it will be appropriate to compensate at the rate of Rs.2000/- per percentage of disability. As such, the calculation for disability is as under:-

Rs.2000/- x 30% = Rs.60,000/-.

13. Admittedly, the Petitioner was a vegetable vendor and he claims that his monthly income was Rs.4000/-. However, there is no proof for the same. Considering the overall circumstances, the Petitioner would have earned at least Rs.3000/- per month. Due to the injury suffered, he could not have carried on his vegetable vending business at least for two months. Hence, the loss of income during the treatment period is as under:-

Rs.3000/- x 2 months treatment period = Rs.6000/-.

14. Keeping in mind the nature of injury suffered by the Petitioner, it will be appropriate to award Rs.10,000/- towards Loss of amenities and Rs.10,000/- towards Extra Nourishment instead of Rs.3000/- granted by the Tribunal. The Tribunal awarded Rs.3,000/- towards transport charges and the same is enhanced to Rs.4,000/-. The sum of Rs.10,000/- provided by the Tribunal towards Pain and suffering is just and proper and hence, the same is confirmed. The modified compensation amount granted by this court is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Loss of income (during the period of treatment)	2,000	6,000
2	Disability	38,000	60,000
3.	Transport expenses	3,000	4,000
4.	Extra nourishment	3,000	10,000
5.	Pain and suffering	10,000	10,000
6.	Loss of amenities	---	10000
	Total	56000	1,00,000

Thus, the total award amount is Rs.1,00,000/- with interest at 7.5 % per annum.

15. In the result,

(i) the Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.1,00,000/- from Rs.56,000/-. (iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 2nd respondent/Insurance company is directed to deposit the entire award amount along with proportionate interest and cost, within a period of six weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(v) The injured appellant/claimant is entitled to withdraw the same along with accrued interest, less the amount, if any already withdrawn. In view of the order of this court dated 28.03.2011 passed in M.P.No.1 of 2010 in CMA.SR.No.31133 of 2010, the appellant is not entitled to payment of interest in respect of delay period of 478 days.

(vi) The Tribunal shall pass necessary orders following the appropriate procedure for disbursement of the award amount. No costs.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Vellore District, Vellore.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.41223
+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.41473

C.M.A.No.948 of 2011

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