

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.02.2018

Coram

The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.2355 of 2017

A.Ganesan

...Appellant/Petitioner

...VS...

1.G.Ramachandran

2.United India Insurance Company Limited.,
Rep. by Branch Manager,
No.235, Gandhi Road,
Arni.

...Respondents/Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 03.01.2013 made in MCOP.No.129 of 2007 on the file of the Motor Accident Claims Tribunal/Sub Court, Arni.

For Appellants : Mr.P.Satheesh Kumar

For Respondents : Mr.T.Ravichandran for R-2

R1:Exparte before Tribunal

JUDGMENT

Not satisfied with the quantum of compensation awarded by the Tribunal, dated 03.01.2013 made in MCOP.No.129 of 2007, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. For sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 11.05.2007 at about 7.00 p.m., when the petitioner was proceeding in his two wheeler bearing Registration No.TN-25-W-3718, in Cheyyar - Vandhavaasi Road, near Vandhavaasi Travellers Bungalow, the first respondent owned Tractor and Trailer bearing Registration No.TN-25-Z-7185 and TCH - 1518, came in the opposite direction, in high speed and on seeing that the petitioner went to the left extreme side of the road and stopped his two wheeler, however,

the Tractor came at high speed and ran over the right foot of the petitioner causing him grievous injuries. The petitioner suffered crush injury on his right foot. The little finger on the right leg was completely removed and also several other injuries all over the body. The accident occurred only due to the negligence of the Tractor driver. The petitioner was aged about 52 years at the time of the accident and he was working as Conductor in TamilNadu State Transport Corporation, earning a sum of Rs.12,000/- per month. Due to the injuries suffered, the petitioner is not in a position to do work normally. Hence, he seeks compensation of Rs.2,50,000/- from the respondents who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent/Insurance company filed a counter contending that the claim of the petitioner regarding the manner of accident is not correct. The second respondent further contends that the driver of the Tractor was not having any valid driving licence at the time of accident. The accident occurred only due to the negligence on the part of the petitioner and after loosing balance of his two wheeler due to high speed he dashed against the Tractor resulting in the accident. As such, the second respondent is not liable to pay any compensation as claimed by the petitioner. Hence, the second respondent seeks dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and medical expert was examined as P.W.2. He also produced documents Ex.P1 to Ex.P12 to substantiate his claim. On the side of the respondents, neither oral nor documentary evidence was produced.

6. The Tribunal, after considering the pleadings, oral and documentary evidence, concluded that the accident occurred only due to the rash and negligent driving of the driver of the offending vehicle owned by the first respondent and insured with the second respondent and directed the respondents jointly and severally to pay a sum of Rs.39,091/- as compensation. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant filed this present appeal.

7. Heard both side counsel and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contended that the accident occurred only due the negligence of the driver of the Tractor. The Tribunal failed to award any amount towards permanent disability and the same is not correct. The amount awarded by the Tribunal under different heads also is

very low. Hence, the petitioner seeks enhancement of the award amount passed by the Tribunal.

9. Per contra, the learned counsel appearing for the second respondent Insurance Company contended that the Tribunal without considering the material available on record has fixed the negligence on the part of the driver of the first respondent and awarded a compensation is on the higher side. Hence, the second respondent seeks dismissal of this appeal.

10. This appeal is mainly concerned with the quantum of compensation awarded by the Tribunal is proper or not and more particularly any proof was produced to prove them the permanent disability was suffered by the petitioner. The fact that the accident occurred only due to the negligence of the first respondent Tractor driver is clearly established by the evidence of P.W.1, which is not contradicted by any evidence on the side of the respondents. The petitioner also produced Ex.P1 First Information Report laid against the driver of the first respondent Tractor. As such the evidence of P.W.1 and Ex.P1 first information report clearly prove the fact of the first respondent driver negligence alone caused the accident. The said finding of the Tribunal is not challenged by the first respondent/owner as well as the second respondent Insurance Company.

11. The petitioner has stated that he suffered fracture and he is finding it difficult to move around. P.W.2 Doctor also stated that the little finger on the right leg of the petitioner was ran over. He can neither stand or and walk for long time. P.W.2 also stated that the petitioner cannot sit with crossed legs and he would not be able to carry on his regular work. P.W.2 assessed the permanent disability at 39% and issued Ex.P11 Disability certificate. He also produced Xray taken by him is Ex.P12. The accident had taken place in the year,2007 and the petitioner was working as conductor in Government Transport Corporation. However there is nothing on record to show that the petitioner is not able to function as conductor after the accident. There is no evidence to show the petitioner suffered any loss of income during treatment period. In such circumstances, it will be appropriate to apply percentage method to assess the loss suffered by the petitioner due to his permanent disability. The Tribunal after finding the petitioner has suffered permanent disability, further award any amount awarded under the head of permanent disability. As the petitioner has suffered 39% permanent disability, it would be appropriate to award compensation at the rate of Rs.3,000/- per percentage of the disability. Thus, the loss of income due to the permanent disability is calculated as follows:- $\text{Rs.3000/-} \times 39 = \text{Rs.1,17,000/-}$. The finding of the Tribunal and granted for

a sum of Rs.39,091/- under the different heads are confirmed. In view of the above said discussion, the award is enhanced to Rs.1,56,091/- from Rs.39,091/- awarded by the Tribunal.

12. In view of the above modification, the civil miscellaneous appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the entire enhanced award amount of Rs.1,56,091/- with interest at the rate of 7.5% p.a. after deducting the amount that has already been deposited by them within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with accrued interest by filing necessary application before the Tribunal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rrg

To

The Motor Accident Claims Tribunal

The Sub Judge,

Arni.

+1cc to M/s.T.Ravichandran, Advocate Sr.No.10377

+1cc to M/s.P.Satheeskumar, Advocate Sr.No.9990

NRI (CO)

sm:5.4.2018

C.M.A.No.2355 of 2017

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