

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.451 of 2018

R.Suresh

..Appellant/Petitioner

Versus

1.N.Janardhanan

2.The Oriental Insurance Co.Ltd.,

Old No.115, New No.216,

Prakasam Salai,

II - floor, Oriental House, HUB,

Broadway, Chennai - 104.

..Respondents/Respondents

Civil Miscellaneous Appeal filed against the judgment and decree dated 13.06.2016 made in M.C.O.P.No.4052 of 2011 on the file of the Motor Accident Claims Tribunal, V - Small Causes Court, Chennai.

For Appellant : Mr.Anand and Suryas

For Respondents : Mr. M.Krishnamoorthy [for R2]

R1 - Exparte

J U D G M E N T

The Appellant/Claimant has filed this appeal against the judgment and decree dated 13.06.2016 made in M.C.O.P.No. 4052 of 2011 on the file of the Motor Accident Claims Tribunal, V - Small Causes Court, Chennai.

2. For the convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the petitioner is that on 09.01.2011 at about 10.30 p.m while the petitioner was walking in the Erumeli Road, the 1st respondent bus bearing Registration No.KL-14-A-1141 came at high speed, dashed against the petitioner, resulting in grievous injuries and multiple fracture to him as follows; fracture of right hip, fracture of right pelvi bone viz., fracture of right public ramus, fracture of left Ilio pubic ramus, the isclio pubic rami (both fracture), fracture of the sacral surface of left Iliac bone (extend into joint) and the transverse process of SI Vertebra, lacerated woond abdominal wall, injury left groin, injury chest (left) injury left knee,

injury left lumbar region and multiple injury all over the body.

4. The petitioner states that the accident occurred only due to negligence of the 1st respondent bus driver. At the time of the accident the petitioner was aged 20 and by working as Electrician was earning Rs.10,000/- per month. Due to injury suffered by him, he is not able to attend to his avocation and suffered loss of income. Hence, the petitioner seeks Rs.6,00,000/- as compensation.

5. On the other hand, opposing the claim of the petitioner, by filing counter, the 2nd respondent/Insurance Company disputes and denies the petition averments regarding the nature of the accident. According to the respondents, it was only due to negligence of the petitioner, the occurrence took place. The claim about the place, time and date of the accident is disputed; amount claimed by the petitioner under various heads is highly excessive. Thus, the 2nd respondent/Insurance Company seeks dismissal of the petition.

6. Before the Tribunal in the joint trial in M.C.O.P.No.4052 & 4131 of 2011, the petitioner examined P.W.1 and P.W.3 and produced documents Exs.P.1 to P.14 to prove his claim. On the side of the respondents neither oral nor documentary evidence was let in. The Tribunal, on the basis of available evidence on record, found the negligence of the 1st respondent driver alone caused the accident and awarded a sum of Rs.2,83,500/- as compensation to the petitioner. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

7. The learned counsel for the petitioner contends that the Tribunal failed to appreciate the evidence regarding the monthly income of the petitioner properly. The Tribunal also reduced the disability percentage without any reason. The petitioner is still suffering from the effects of the injuries and he is not able to attend to his work regularly. The Tribunal failed to consider the nature of injuries and the disability suffered by him properly. Thus, the petitioner seeks enhancement of the award amount by allowing the appeal.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the Tribunal failed to consider the contention that the accident occurred only due to negligence of the petitioner and wrongly fixed the negligence and liability on the part of the first respondent. The amount awarded by the Tribunal is highly excessive. The petitioner has not proved that he is suffering from functional disability and unable to carry on his work. Thus, the 2nd respondent/Insurance Company seeks dismissal of the appeal.

9. Heard both sides and perused the available materials on record.

10. The petitioner, who deposed as P.W.1, clearly stated that as he was walking along the Erumeli Road, the 1st respondent bus came at high speed and dashed against him. The petitioner also produced Ex.P.7 - F.I.R Copy to show that police registered a case against the 1st respondent driver only. It is clear from the oral evidence of P.W.1 as well as contents of P.W.7 - F.I.R that the accident occurred due to negligence of the 1st respondent vehicle driver. On the other hand, the respondent has not chosen to examine either the driver of the 1st respondent vehicle or any person to contradict the version of accident stated by P.W.1. As such, it is clear from the evidence of P.W.1 and contents of Ex.P.1 - F.I.R that the negligence of the 1st respondent vehicle driver alone caused the accident.

11. The petitioner stated that he suffered various multiple injuries and also fracture as afore stated.

12. The petitioner examined the Doctor, who assessed disability and issued Ex.P.13 - Disability certificate. According to Doctor, the disability suffered by the petitioner is 45% and the same is based on Ex.P.14 - X-Ray as well as personal assessment. However, the Doctor who deposed as P.W.3 did not give any treatment and also failed to annexe any calculation sheet with the disability certificate. As such, the Tribunal taking into consideration the medical evidence and also the claim of the petitioner that he is not able to walk, fixed the disability at 25%. The learned counsel for the petitioner contented that there is no ground to reduce the disability as fixed by the Doctor. The Tribunal has not stated any reason for reducing the disability from 45% as stated by P.W.2 - Doctor to fix at 25%. In such circumstances, considering the nature of injury suffered and the evidence of P.W.1 that he is not able to carry out day to day work, it will be appropriate to fix the disability at 45% itself on the basis of Ex.P.13 - Disability certificate and the oral evidence of P.W.3 - Doctor. Hence, the compensation for permanent disability is calculated as follows:-

Rs.3000 x 45% = Rs.1,35,000/-

13. The Tribunal has awarded Rs.25,000/- for extra nourishment. Considering the period of treatment and the injury suffered by the petitioner, it will be appropriate to enhance the same to Rs.30,000/-.

14. Taking into consideration the facts and circumstances, this court is of the view that the amount awarded under other heads apart from permanent disability needs no interference. Thus, the award passed by the Tribunal stands modified as

follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of Income	Rs.30,000.00	Rs.30,000.00
2	Extra Nourishment	Rs.20,000.00	Rs.30,000.00
3	Medical Expenses	Rs.59,439.00	Rs.59,439.00
4	Pain and Suffering	Rs.50,000.00	Rs.50,000.00
5	Permanent Disability	Rs.75,000.00	Rs.1,35,000.00
6	Loss of Amenities	Rs.40,000.00	Rs.40,000.00
7.	Attender Charges	Rs.9,000.00	Rs.9,000.00
8	Total	Rs.2,83,439.00	Rs.3,53,439.00
		Round off	Round off
		Rs.2,83,500.00	Rs.3,53,500.00

15. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.3,53,500/- from Rs.2,83,500/-.
- (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. Petitioner shall forego interest for the delay period.
- (iii) In view of the above enhanced award amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.
- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) Appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Motor Accident Claims Tribunal,
V - Small Causes Court,
Chennai.

Copy to:The Section Officer,
V.R.Section, High Court, Madras.

+lcc to M/s.Anand and Suryas, Advocate Sr.No.17463
+lcc to Mr.M.Krishnamoorthy, Advocate Sr.No.17269

RK(CO)
EU:24.4.2018

C.M.A.No.451 of 2018



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