IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.229 of 2014

A.Senthil Kumar ...Appellant/Petitioner

vs

1.S.Harichandra Babu

2.National Insurance Company Limited
Branch I, 33, Promenede Road
Cantonment
Tiruchirappalli District ..Respondents/Respondents

Civil Miscellaneous Appeal filed against the order and decree dated 16.12.2011 made in M.C.O.P.No.153 of 2010 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Perambalur.

For appellant : : Ms.C.Sangamithirai
for Respondents : : Mr.J.Chandran for R2.

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/claimant, challenging the judgment and decree dated 16.12.2011 made in MACT.O.P.No.153 of 2010 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Perambalur.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. It is a case of injury. The case of the petitioner is that on 13.05.2009 at 00.15 hours, when the petitioner was riding his TVS Moped bearing Reg.No.TN 29 Q 7432 near new bus stand leading from four road, a LPG Tanker Lorry bearing Reg.No.TN 45 S 9767 came in the same direction and dashed against the Petitioner's vehicle from behind resulting in the petitioner sustaining grievous injuries. The Petitioner claims that the negligence of the 1st respondent vehicle driver alone caused the accident and sought compensation of Rs.10,00,000/-.

3. On the other hand, opposing the petition, the 2nd respondent/Insurance Company in its counter, averred that the manner of accident and the nature of injuries suffered by the Petitioner has to be proved. The claim of the petitioner as

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regards compensation is excessive and the petition has to be dismissed.

4. Before the Tribunal, the Petitioner examined himself as P.W.1 and medical expert as P.W.2 and produced documents in Ex.P.1 to Ex.P.14. On the side of the 2nd respondent insurance company, neither any witness was examined nor any document was marked. The Tribunal, on appreciation of available evidence before it, found that the driver of the 1st respondent vehicle alone caused the accident and also granted Rs.3,18,300/- as compensation to the injured petitioner. Being not satisfied with the quantum of award, the injured Petitioner has come forward with the present Appeal.

5. The learned counsel for the appellant/petitioner contended that the Tribunal failed to consider the oral and documentary evidence properly and failed to grant any amount towards future medical expenses. It is further stated that the amount awarded by the tribunal under different heads are very low. The learned counsel thus sought for enhancement of the compensation and prayed to entertain the appeal.

6. Per contra, the learned counsel for the 2nd respondent contended that the Tribunal has properly appreciated the evidence and the award granted by the Tribunal for the injuries sustained by the Petitioner is on the higher side. Hence, the 2nd respondent counsel seeks for dismissal of the appeal.

7. Insofar as the finding of the Tribunal with regard to negligence is concerned, the Tribunal by looking into Ex.P.1 FIR and the oral evidence of P.W.1, held that the negligence of the driver of the 1st respondent vehicle alone caused the accident and the same, in my considered view is just and proper.

8. The Petitioner produced Ex.P.2-Wound Certificate, Exs.P.3, 4 and 5 discharge summary, Ex.P.8 Photos and CD to demonstrate the nature of injuries suffered by him. P.W.2 doctor stated that the petitioner sustained fracture in right knee and left hip portion. Even though bones have been reset, the petitioner is having difficulty in stretching and bending his right leg. P.W.2 doctor assessed disability at 40%. However, the tribunal fixed the disability at 37% and granted Rs.74,000/- as compensation.

9. Taking into consideration the injuries suffered by the petitioner and the evidence of doctor, this court is inclined to award Rs.3000/- per percentage of disability holding that the award granted by the Tribunal in this regard is meagre. Accordingly, towards permanent disability suffered by the petitioner, the compensation is calculated as under:-

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Rs.3000/- x 37% = Rs.1,11,000/-.
Thus, a sum of Rs.1,11,000/- is awarded under the head "disability".

10. The Petitioner also stated that he was working as JCB operator and due to the accident and the resultant injuries and treatment, he could not attend to his work for six months. However, there is no substantial evidence produced by the Petitioner to fix his notional income. In any event, taking into account the averments put forth in the petition, the notional monthly income of the Petitioner is fixed at Rs.6,500/- per month and accordingly, for the period of treatment he underwent i.e, 6 months, it will be appropriate to calculate the loss of income during the period of treatment as under:-
Rs.6,500/- 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."

11. The learned counsel for the appellant also argued that higher amount may be awarded towards Nutritious food as well as Pain and Suffering. Finding some force in the said argument, this court is inclined to award Rs.10,000/- under the head "Nutritious food" and Rs.30,000/- under the head "Pain and Suffering". Taking into account the treatment underwent by the Petitioner and the averments regarding future medical expenses, it will be appropriate to award Rs.30,000/- under the head "Future Medical Expenses and Rs.15,000/- under the head "loss of amenities".

12. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Loss of income during the period of treatment	Rs. 13,500/-	Rs. 39,000/-
2	Transport charges	Rs. 5,000/-	Rs. 10,000/-
3	Nutritious food	Rs. 2,000/-	Rs. 10,000/-
4	Pain and suffering	Rs. 10,000/-	Rs. 30 ,000/-
5	Partial permanent disability	Rs. 74,000/-	Rs. 1,11,000/-
6	Medical expenses	Rs. 2,13,811/-	Rs. 2,13,811/-
7	Future medical expenses	---	Rs. 30,000/-
8	Loss of amenities	---	Rs. 15,000/-

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Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
	Total	Rs. 3,18,311/- rounded off to Rs.3,18,300/-	Rs. 4,58,811/- rounded off to Rs.4,58,800/-

13. In the result, the Civil Miscellaneous Appeal is Partly Allowed with costs in the terms as stated infra:-

(i) The award of the Tribunal is enhanced to Rs.4,58,800/- from Rs.3,18,300/-;

(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 accrued 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/claimant is permitted to withdraw the amount awarded as above along with accrued interest, by filing proper application before the Tribunal, less the amount, if any already withdrawn. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
1.The Sub Judge,
Motor Accidents Claims Tribunal,
Subordinate Court, Perambalur.

2.The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.C.SANGAMITHI, Advocate, S.R.No.6909
+1cc to Mr.J.CHANDRAN, Advocate, S.R.No. 7920

C.M.A.No.229 of 2014

KJ(CO)
TR(08/05/2018)

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