

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2405 of 2014

Neelakandan

..Appellant

Versus

1.Abdul Kani

2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai - 600 002.

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the judgment and decree dated 01.08.2013 made in M.A.C.T.O.P.No.3547 of 2012 on the file of the Motor Accident Claims Tribunal, Court of III Small Causes, Chennai.

For Appellant : Mr.K.Rajeshwaran

For Respondent : Mr.C.R.Krishnamoorthy
No.2 : R1-Remain Exparte

J U D G M E N T

The petitioner/appellant has filed this appeal against the judgment and decree dated 01.08.2013 made in M.A.C.T.O.P.No.3547 of 2012 on the file of the Motor Accident Claims Tribunal, Court of III Small Causes, 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 03.07.2012 at 10 p.m., while the petitioner was proceeding on foot, opposite to Indian Bank in Sterling Road, Nungambakkam, a motor cycle bearing Registration No.TN-02-H-5906, came at high speed dashed against the petitioner, causing him grievous injuries and Intertrochantric fracture right, dynamic hip screw and multiple injuries all over the body. The accident occurred only due to negligence of the two wheeler rider. The petitioner was aged 75 years and he was working as a manager in a private concern

earning Rs.6,500/- per month. Now, due to the injury, he is not in a position to attend to his work. Hence, the petitioner sought for a sum of Rs.8,00,000/- as compensation from the respondents, who are the owner and insurer of the vehicle.

4. On the other hand, opposing the claim of the petitioner, by filing counter, the 1st respondent owner of the vehicle contends that the accident did not occur as alleged by the petitioner. The claim of the petitioner is exorbitant. The age, avocation, income and other details furnished by the petitioner is disputed. Thus, the respondents sought for dismissal of the petition.

5. Likewise, the 2nd respondent/Insurance Company contended that the rider of motor cycle was not holding valid driving license and as such, violated the policy condition. Hence, the 2nd respondent/Insurance Company is not liable to pay any compensation. The 1st respondent has not furnished any particulars of the accident to the 2nd respondent/Insurance Company. The accident did not occur as alleged by the petitioner. It was the petitioner who caused the accident by failing to follow the traffic rules. Thus, the 2nd respondent/Insurance Company sought for dismissal of the petition.

6. Before the Tribunal, the petitioner examined himself as P.W.1 along with two other witnesses as P.W.2 and P.W.3 and produced documents Exs.P.1 to P.20 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 that the negligence of the 1st respondent rider alone caused the accident and passed an award for a sum of Rs.2,61,000/- payable by the respondents. Being not satisfied with the quantum of the award, the petitioner has come forward with the present appeal.

6. The learned counsel for the petitioner contends that the Tribunal failed to appreciate the evidence properly. The income of the injured was Rs.6,500/- as evidenced by Ex.P.18 - Salary Certificate, but the Tribunal wrongly fixed the income at Rs.5,000/- only. The Tribunal without any reason reduced the disability suffered by the petitioner from 60% to 55%. The loss of earning capacity ought to have been calculated by adopting multiplier method. The Tribunal failed to appreciate the medical bills produced by the petitioner properly. The amount awarded under different heads is very meagre. Hence, the petitioner sought for enhancement of the quantum of the award by allowing the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance Company contends that the accident itself occurred only due to the negligence of the petitioner and as

such, he is not entitled to seek any compensation from the respondents. The age, avocation and income pleaded by the petitioner is not correct. The Tribunal after analysing the evidence on record awarded compensation which is on higher side. Thus, the 2nd respondent/Insurance Company contends that no ground is made out for enhancement and as such, sought for dismissal of the appeal.

8. The petitioner, who examined himself as P.W.1 stated that on 03.07.2012 at 10.00 p.m., as he was walking along the Sterling Road, Numgambakkam, on his way to home, the motor cycle bearing Registration No.TN-02-H-5906 came at high speed, dashed against him, resulting in the accident. The police also registered a case against the rider of the two wheeler only as per Ex.P.1 - Copy of F.I.R. Further, after completion investigation, the police also laid charge sheet against the rider of the two wheeler, for causing of the accident as evidenced by Ex.P.3 - Copy of Charge sheet. It is also clear that the contents of F.I.R collaborates the oral version of P.W.1. On the other hand, there is no contra evidence let in by the respondents. As such, on the basis of evidence of P.W.1 as well as contents of Exs.P.1 and P.3, it is clear that rash and negligent driving of the rider of two wheeler alone caused the accident. As such, the respondents who are the owner and insurer of the vehicle are liable to pay compensation.

9. The petitioner stated that he was aged 75 years at the time of the accident and he suffered fracture as well as multiple injury all over the body. He produced Ex.P.3 accident register in proof of the injury suffered by him. He also underwent treatment as inpatient at Dr.Mehta's Hospital from 04.07.2012 to 08.07.2012 as evidenced by Ex.P.4 - Discharge Summary. It is clear from the available records that the petitioner suffered from Intertrochantric fracture right, dynamic hip screw and multiple injuries all over the body. The Doctor who examined the petitioner and assessed disability deposed as P.W.3 and stated that the petitioner suffered 60% permanent disability. He also issued Ex.P.18 - Disability certificate along with Ex.P.9 - Work sheet. The X-Ray taken by him is produced as Ex.P.20. It is clear from the same that the petitioner has suffered permanent disability. Considering the fact that the Doctor who deposed as P.W.3 did not treat the petitioner and other contended circumstances, the Tribunal was justified in fixing the disability suffered by the petitioner at 55%.

10. The petitioner stated that he was working as a manager in a private firm earning Rs.6,500/- per month. He produced his salary certificate as Ex.P.12 and stated that due to injury, he was reverted from job. In proof of the same, he produced Ex.P.13 relieving order. The officer of the said private firm who deposed as P.W.2 stated that the petitioner was employed as

manager in their company for 15 years and due to injury suffered, he was not able to attend office and as such, he has left from duty. The Tribunal considering the evidence of P.W.1 and P.W.2 fixed the monthly income at Rs.5,000/-. The petitioner contends that as per Ex.P.12 - Salary certificate, his income was Rs.6,500/- and the same should be adopted. The staff of the company were also examined. Considering the nature of injury suffered and the period of treatment undergone and the fact that the petitioner would not have attended to his work atleast for two months, it will be appropriate to fix the loss of income at the rate of Rs.6,500/- per month itself. Hence, for the said period of treatment, he is entitled for compensation towards loss of income at a rate of Rs.6500 * 2 = Rs.13,000/-

11. The petitioner has suffered 55% permanent disability. As such considering his age and other circumstances, it will be appropriate to compensate him at a rate of Rs.3,000/- per percentage, instead of Rs.2,000/- fixed by the Tribunal. Thus, the disability loss is calculated as follows:-

$$\text{Rs.3000} * 55 = \text{Rs.1,65,000/-}$$

12. The Tribunal has awarded the following amounts as compensation under different heads. Considering the nature of injury suffered by the petitioner, this Court is of the view that the Tribunal is justified in awarding such amount under different heads and the same needs no interference.

13. 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	Disability	Rs. 1,10,000.00	Rs. 1,65,000.00
2	Damages of Clothes	Rs. 1,000.00	Rs. 1,000.00
3	Loss of income	Rs. 10,000.00	Rs. 13,000.00
4	Transportation	Rs. 5,000.00	Rs. 5,000.00
5	Extra Nourishments	Rs. 4,000.00	Rs. 4,000.00
6	Pain and Sufferings	Rs. 25,000.00	Rs. 25,000.00
7	Attender Charges	Rs. 3,000.00	Rs. 3,000.00
8	Medical Expenses	Rs. 1,00,000.00	Rs. 1,00,000.00

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
9	Loss of Amenities	Rs. 3,000.00	-
10	Total	Rs. 2,61,000.00	Rs. 3,16,000.00

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

- (i) The award of the Tribunal is enhanced to Rs.3,16,000/- from Rs.2,61,000/-.
- (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 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 order.
- (iv) On such deposit, the petitioner/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) Petitioner/claimant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount.

No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bri

To

1.The III Small Causes,
Chennai.

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

+1cc to M/s.K.Rajeshwaran, Advocate sr.no.22808
+1cc to M/s.C.R.Krishmoorthy, Advocate sr.no.22575

C.M.A.No.2405 of 2014

cp(co)
nr 08/06/2018



WEB COPY